SUPREME COURT OF THE UNITED STATES.

No. 128.

THE PENSACOLA TELEGRAPH COMPANY, APPELLANT,

vs.

THE WESTERN UNION TELEGRAPH COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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1 Pleas in the United States circuit court in and for the northern district of Florida, at Pensacola, in a certain cause therein, wherein the Pensacola Telegraph Company are complainant and the Western Union Telegraph Company are defendants.

Be it remembered that on this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-four, came the Pensacola Telegraph Company, complainants in the case aforesaid, by R. L. Campbell, Charles W. Jones, and G. A. Stanley, their attorn*ies*, and filed in the clerk's office of the United States circuit court aforesaid their bill for injunction, in the words and figures following, to wit:

Circuit court of the United States in and for the northern district of Florida.

To the honorable the justices of the circuit court of the United States in and for the northern district of Florida:

Humbly complaining, your orator, the Pensacola Telegraph Company, a corporation created by the laws of the State of Florida, and which has its principal place of business in the city of Pensacola, in said State, brings this bill of complaint against the Western Union Telegraph Company, a corporation created by and existing under the laws of the State of New York.

And thereupon your orator showeth unto your honors that the legislature of the State of Florida, by an act entitled "An act to incorporate the Pensacola Telegraph Company," approved on the 11 day of December, 1866, a copy of which is annexed to this bill, marked "Exhibit A," and which your orator prays may be taken as part of this bill, did charter and create the several persons named in said act a body-cor-
2 porate, by the name of the Pensacola Telegraph Company, the better to enable said persons to construct, maintain, and operate lines of electric telegraph within the county of Escambia, in said State of Florida, which would facilitate communication and intercourse between the people of said county and persons and places beyond said State.

That in pursuance of the provisions and under the authority of the said act of incorporation the capital stock of said company was fully subscribed and paid, and said company having obtained permission from the Alabama and Florida Railroad Company to erect a line of telegraph along the line of its road, did, about the said year 1866, erect, at great expense, a permanent and substantial line of telegraph from the city of Pensacola, in said county and State, and along the line of said railway, to the southern boundary of the State of Alabama, a distance of forty-seven miles.

That at the time of the passage of said act of incorporation and the acceptance thereof by said corporators there was little inducement to the investment of capital in the construction of said line of telegraph except in the exclusive privilege granted by said act to said corporators to erect, maintain, and operate said line, and it was only in consequence of the very favorable charter granted to said corporators that said line was built and maintained, as during the first years of its existence the company received no profits from their investment.

That at no period until the present time have any of the large telegraph corporations of the country regarded the business of Pensacola of

sufficient importance or as offering sufficient profit to induce them to extend their lines into said county; and it was not until the en-
3 terprise, patience, and industry of your orator's officers and agents had shown that their undertaking was a successful one that the defendant (as hereinafter stated) attempted or offered to construct a telegraph-line in said county.

And your orator further showeth unto your honors that it has in all things conformed to the provisions of its said charter, and in addition to the line constructed as aforesaid has erected two other lines in said county for the convenience of the people thereof, and at great expense; and the present value of the property of your orator held under its said charter is not less than thousand dollars.

That by the provision of said act of incorporation or charter your orator is entitled to the exclusive right and privilege of erecting, maintaining, and operating telegraph-lines in said county & State at least for the period of twenty-five years from the time of the passage of said act of incorporation, which is not yet expired.

That on or about the day of , 1874, the legislature of the State of Florida, disregarding the rights of your orator under its said charter, and in violation of the contract between your orator and the said State of Florida, evidenced by said charter or act of incorporation passed by the said legislature in the year of 1866, passed or enacted another act entitled an act to , a copy of which last act is hereunto annexed, marked "Exhibit B," and which your orator prays may be taken and considered as part of this bill of complaint.

That under and by virtue of the pretended authority contained in said last-mentioned act, the said defendant, a corporation created and existing under the laws of New York, by and through its officers and agents, is now erecting, against the protest and in violation of the rights of your orator as aforesaid, a line of electric telegraph from the city of Pensacola, in said county and State, to the southern boundary of the State of Alabama, and along and upon the identical
4 railway-line where your orator's line of telegraph is and has been located since the said year of 1866.

That it is the intention of the said defendant to use and employ the line now erecting along the said railway in the transmission of telegraphic messages for the public of said county and State, and for compensation to be prescribed by said defendant.

And your orator further showeth unto your honors that by the erection and operation of the said line of telegraph by the defendant the property of your orator's created by its said charter will become valueless to your orator, and it will lose all the benefit of the franchises conferred upon it by its said charter, and which constituted the sole inducement to the investment of the capital of its corporators in the erection of said lines of telegraph.

Your orator prays, in consideration of the premises, that your honors may grant unto your orator a writ of injunction to restrain the defendant, their agents, officers, and attorn*ies*, from erecting, using, or maintaining any lines of telegraph in said county and State, and from interfering with your orator in any way in the exercise of its exclusive rights and privileges under said charter; and that the injunction so granted may be made perpetual, and that your orator may have such further or other relief in the premises as equity and justice may seem to require; and that your honors may grant unto your orator the gracious writ of subpœna, to be directed to the said defendant, requiring it, by a day to be named therein, and under a certain penalty, to be and appear before

this honorable court, and abide by and stand to the order and decrees which may be made in the premises.

CAMPBELL, JONES & STANLEY,
For Complainants.

5 NORTHERN DISTRICT OF FLORIDA:

Charles Le Baron, junior, treasurer of the Pensacola Telegraph Company, being duly sworn, says that the facts set forth in the foregoing bill are true to the best of his knowledge, information, and belief.

CHAS. LE BARON, J'R,
Treasurer Pensacola Telegraph Co.

Sworn to & subscribed before me this 27th day of July, A. D. 1874.
M. P. DE RIOBOO, *Clerk.*

(Indorsements:) Pensacola Telegraph Co. vs. The Western Union Telegraph Co. Bill for injunction. Filed July 27th, 1874.
M. P. DE RIOBOO, *Clerk.*

And afterwards, to wit, on the 30th day of July, in the year of our Lord one thousand eight hundred and seventy-four, the complainant, by its attorn*ies*, filed in the clerk's office aforesaid its amended bill for injunction, in the words and figures following, to wit:

Circuit court of the United States in and for the northern district of Florida.

To the honorable the justices of the circuit court of the United States in and for the northern district of Florida:

Humbly complaining, your orator, the Pensacola Telegraph Company, a corporation created by the laws of the State of Florida, and
6 which has its principal place of business in the city of Pensacola, in said State, brings this bill of complaint against the Western Union Telegraph Company, a corporation created by and existing under the laws of the State of New York.

And thereupon your orator sheweth unto your honors that the legislature of the State of Florida, by an act entitled "An act to incorporate the Pensacola Telegraph Company," approved on the 11th day of December, 1866, a copy of which is annexed to this bill, marked "Exhibit A," and which your orator prays may be taken as part of this bill, did constitute and create the several persons named in said act a body-corporate by the name of the Pensacola Telegraph Company, the better to enable said persons to contract, maintain, and operate lines of electric telegraph within the county of Escambia, in said State of Florida, which would facilitate communication and intercourse between the people of said county and persons and places beyond said State.

That in pursuance of the provision and under the authority of the said act of incorporation, the capital stock of said company was fully subscribed and paid, and said company having obtained permission from the Alabama and Florida Railroad Company to erect a line of telegraph along the line of its road, did, about the said year 1866, erect, at great expense, a permanent and substantial line of telegraph from the city of Pensacola, in said county and State, and along the line of said railway, to the southern boundary of the State of Alabama, a distance of forty-seven *years.*

That at the time of the passage of said act of incorporation and the acceptance thereof by said corporators there was little inducement to the investment of capital in the construction of said line of telegraph, except in the exclusive privilege granted by said act to said cor-
7 porators to erect, maintain, and operate said line, and it was only in consequence of the very favorable charter granted to said corporators that said line was built and maintained, as during the first years of its existence the company received no profits from their investment.

That at no period until the present time have any of the large telegraph corporations of the country regarded the business of Pensacola of sufficient importance or as offering sufficient profit to induce them to extend their lines into said county; and it was not until the enterprise, patience, and industry of your orator's officers and agents had shown that their undertaking was a successfull one that the defendant has (as hereinafter stated) attempted or offered to construct a telegraph-line in said county.

And you orator further sheweth unto your honors that it has in all things conformed to the provisions of its said charter, and in addition to the line constructed as aforesaid has erected two other lines in said county for the convenience of the people thereof, and at great expense; and the present value of the property of your orator, held under its said charter, is not less than fifteen thousand dollars.

That by the provision of said act of incorporation or charter your orator is entitled to the exclusive right and privilege of erecting, maintaining, and operating telegraph-lines in said county and State at least for the period of twenty years from the time of the passage of said act of incorporation, which is not yet expired.

That on or about the 14th day of February, 1873, the legislature of the State of Florida, disregarding the rights of your orator under its said charter, and in violation of the contract between your orator and the said State of Florida, evidenced by said charter or act of incorporation passed by said legislature in the year of 1866, passed or enacted
8 another act entitled an act to amend the last-mentioned act, approved 18th February, 1874, a copy of which last act is hereunto annexed, marked "Exhibit B," and which your orator prays may be taken and considered as part of this bill of complaint.

That under and by virtue of the pretended authority contained in said last-mentioned act, the said defendant, a corporation created and existing under the laws of New York, by and through its officers and agents, is now erecting, against the protest and in violation of the rights of your orator as aforesaid, a line of electric telegraph from the city of Pensacola, in said county and State, to the southern boundary of the State of Alabama, and along and upon the identical railway-line where your orator's line of telegraph is and has been located since the said year of 1866.

That it is the intention of the said defendant to use and employ the line now erecting along the said railway in the transmission of telegraphic messages for the public of said county and State, and for compensation to be prescribed by said defendant.

And your orator further sheweth unto your honors that by the erection and operation of the said line of telegraph by the defendant the property of your orators, created by its said charter, will become valueless to your orator, and it will loose all the benefit of the franchises conferred upon it by its said charter, and which constituted the sole induce-

ment to the investment of the capital of its corporators in the erection of said lines of telegraph.

Your orator prays, in consideration of the premises, that your honors may grant unto your orator a writ of injunction to restrain the defendant, their agents, officers, and attornies, from erecting, using, or maintaining any lines of telegraph in said county and State, and from interfering
9 with your orator in any way in the exercise of its exclusive rights and privileges under said charter, and that the injunction so granted may be made perpetual; and that your orator may have such further or other relief in the premises as equity and justice may seem to require; and that your honors may grant unto your orator the gracious writ of subpœna, to be directed to the said defendant, requiring it, by a day to be named therein, and under a certain penalty, to be and appear before this honorable court, and abide by and stand to the order and decrees which may be made in the premises.

CAMPBELL, JONES & STANLEY,
For Complainants.

NORTHERN DISTRICT OF FLORIDA:

Charles Le Baron, junior, treasurer of the Pensacola Telegraph Company, being duly sworn, says that the facts set forth in the foregoing bill are true to the best of his knowledge, information, and belief.

CHAS. LE BARON, J'R,
Treasurer Pensacola Telegraph Co.

Sworn to & subscribed before me this 27th day of July, A. D. 1873.
M. P. DE RIOBOO,
Clerk.

The foregoing bill was this day amended by striking out the word "five years" after the word twenty, on 17 line of fourth page of said line.

July 30th, 1874.

CAMPBELL, JONES & STANLEY.

A.

SECTION 1st. Be it enacted by the senate and house of representatives of the State of Florida in general assembly convened, That
10 William H. Judah, Charles L. Le Baron, E. E. Simpson, John Brosnaham, Samuel McClellan, William J. Keyser, J. G. Thornton, and A. L. Avery, and their successors, are hereby constituted a body-corporate under the style of the Pensacola Telegraph Company, and that such corporation shall enjoy the sole and exclusive privilege and right of establishing and maintaining lines of electric telegraph in the counties of Escambia and Santa Rosa, either from different points within said counties or connecting with lines coming into said counties, or either of them, from other points in this or any other State.

SECTION 2nd. Be it further enacted, That the capital stock of said company shall be five thousand dollars, divided into shares of one hundred dollars each, with the privilege of increasing said stock to such amount as the stockholders may, from time to time, determine to be necessary to meet the wants of the public; and whenever a vote of the stockholders shall be taken, each stockholder shall be allowed one vote in person or by proxy for every share owned by him.

SECTION 3rd. Be it further enacted, That the authority of the said corporation shall be invested in a board of five examiners, one of whom shall be president, which said board shall be annually elected by the stockholders in such manner as may be prescribed by the by-laws of said corporation; and the said president and board of managers shall hold their offices until their successors shall have been elected and qualified.

SECTION 4th. Be it further enacted, That the said company s hereby authorized to locate and construct its lines of telegraph in the counties of Escambia and Santa Rosa as aforesaid, along and upon any public road or highway, or across any water, or upon any railroad or private property, for which permission shall first have been obtained of the proprietors thereof, by the erection and construction of all the necessary fixtures, including posts, piers, or abutments, for sustaining the
11 wires when stretched through the air, and the necessary excavations when placed under the ground, but the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters.

SECTION 5th. Be it further enacted, That said company shall have power, by agreement with other persons or bodies-corporate, to connect by lease, purchase, or otherwise, their lines of telegraph constructed within or without this State.

SECTION 6th. Be it further enacted, That said company, in the construction and maintainment of their lines as aforesaid, shall have a right to cut down or remove any trees, except ornamental or shade trees, which may be within the limits of the highways, and which would obstruct the erection *of* construction of their lines, or injure them by falling, and trees standing upon lands by the side of any road by which the said lines shall be located may also be cut down or removed, if necessary for the safety of such lines of telegraph, and the owners of said lands shall be entitled to compensation therefor, to be ascertained, if the parties do not agree, in the same manner as damages are ascertained for land taken for highways; and the said company shall be held to pay the amount so ascertained.

SECTION 7th. Be it further enacted, That it shall be the duty of the company, whenever any line constructed by them shall be in readiness for operation, to receive messages from all persons or corporations on the payment of their usual charges and under the general rules and regulations of said company, and transmit the same in good faith and without partiality: Provided, however, that nothing in this act shall exonerate said company from liability for the payment of damages at common law for any breach of contract or good faith.

Passed the house of representatives December 1st, 1866.
Passed the senate December 6th, 1866.
12 Approved by the governor December 11th, 1866.

(Endorsement:) Pensacola Telegraph Co. vs. The Western Union Telegraph Co. Bill for injunction. Filed July 30th, 1874. M. P. de Rioboo, clerk.

And afterwards, to wit, on the 3d day of August, in the year of our Lord one thousand eight hundred and seventy-four, the defendant, by C. C. Yonge and A. E. Maxwell, its solicitors, filed in the clerk's office aforesaid its answer, in the words and figures following, to wit:

Circuit court of the United States, northern district of Florida.

WESTERN UNION TELEGRAPH COMPANY
qts.
PENSACOLA TELEGRAPH COMPANY.

To the honorable the judges of the circuit court of the United States for the northern district of Florida:

The answer of the Western Union Telegraph Company, a corporation chartered under the laws of the State of New York, respondent, to the bill of complaint of the Pensacola Telegraph Company, claiming to be a corporation under the laws of Florida, complainant.

This respondent, reserving to itself all right of exception to the said bill of complaint, for answer thereto saith:

13 That it is true that the legislature of the State of Florida did, on the 11th day of December, 1866, grant a charter to certain persons named in said act, under the style of "The Pensacola Telegraph Company," giving to them the exclusive privilege and right of "establishing and maintaining" lines of electric telegraph in the counties of Escambia and Santa Rosa in the said State of Florida; but respondent denies that the said charter recites that the object or purpose of the said exclusive grant was to facilitate communication and intercourse between the people of said county and persons and places beyond the State.

Respondents are unable either to admit or deny that the capital stock of $5,000.00 was paid, and require proof thereof; and respondent denies that said Pensacola Telegraph Company obtained permission from the Alabama & Florida Railroad Company in any legal mode, valid and binding on the said railroad company and its assigns, to erect a telegraph-line along the line of its road, and alleges that the Pensacola & Louisville Railroad Company became, in the year 1872, the assignee, owner, and proprietor of the Ala. and Fl'a R'road and all the appurtenances, rights, and privileges, easements and franchises, of said company, including its right of way. And respondent denies that said complainant has obtained the permission of the Pen. & Lou. R. R. Company to construct or operate its lines of telegraph along its right of way, and that it has no such right. Respondent admits the building of the said line on said railway from the city of Pensacola to the southern boundary-line of the State of Alabama, a distance of forty-seven (47) miles, about the month of June, in the year 1866, but that it was built at great expense is not admitted, there being nothing in the character of the country through which it passed to make it expensive, it being open piny woods with no water-courses of importance to cross, and

14 timber for poles being convenient, abundant, and cheap.

Respondent denies that there was little inducement at the time of the passage of said act of incorporation and the acceptance thereof to the investment of capital in the construction and maintenance of said line except the exclusive privilege granted by said act, but admits that it may be true that the very favorable character of said charter, to wit, the perpetual monopoly attempted to be engrafted on it, did operate favorably in inducing the subscription of stock, if any was made, in said company; and respondent denies that during the first years of its existence that the said company derived no profits from their investment; but, on the contrary, respondent avers that it is informed and believes that

the said line was remunerative from the beginning, and was expected so to be.

That it is not true, as alleged, that at no period of time, until the present, have any large telegraph companies of the country regarded the business of Pensacola of sufficient importance to induce them to extend their lines into said county of Escambia; but, on the contrary, this respondent has long desired to make connexion with Pensacola, the business of the port being considerable, considering its population, and this respondent, not desiring to interfere with or injure said complainant by building an opposition line, has vainly endeavored for several years to purchase the said Pensacola telegraph-line from the said complainant with the view and purpose of connecting its numerous lines with Pensacola, but has failed to effect any such arrangement, complainant refusing to sell except at the most exorbitant and unreasonable price; and respondent avers that other lines would long since have been constructed to Pensacola but for the pretended exclusive rights claimed by the complainants and the indisposition of parties to engage in litigation
15 constantly threatened by complainants, and which threat is put now in execution, as these proceedings testify.

Respondent is unable to admit or deny that said complainant has in all things conformed to the provisions of its said charter; and respondent does not admit that the estimate of complainant of the value of its lines is correct, and requires proof of such value.

Respondent denies that the complainant is entitled, as alleged in its bill, to the exclusive right and privilege of erecting, maintaining, and operating telegraph-lines in said county of Escambia for a period of twenty-five years from the time of the passage of said act of incorporation as alleged; and, on the contrary, alleges that the said charter purports to grant the exclusive right and privilege of "establishing and maintaining" lines of electric telegraph in said counties of Escambia and Santa Rosa without limit of time, which respondent is advised is in conflict with the constitution of the State of Florida in force at the time of granting the said exclusive privilege, and which constitution, by section 2, article XIII, prohibits the granting of exclusive privileges to any incorporation for a greater period than twenty years; and defendant denies that the said telegraph company has any exclusive right and privilege at all, if, indeed, it has a legal existence. And respondent appends a copy of said article of the constitution as a part of this answer.

Respondent further answering says that it is true that the legislature of Florida did, on the 14th day of February, A. D. 1873, grant a charter under an act entitled "An act to authorize the Pensacola and Louisville Railroad Company to construct, own, and operate a telegraph-line upon their right of way," which act was amended by an act entitled "An act to amend an act entitled 'An act to authorize the Pensacola
16 and Louisville Railroad Company to construct, own, and operate a telegraph-line upon their right of way,'" approved February 18th, 1874, copies of which acts are hereto appended as part of this answer, and marked "Y;" but respondent denies that the legislature of Florida passed these acts in disregard of the rights of complainant under said charter of 1866, but, on the contrary, said acts were passed only after most careful investigation as to the constitutional character of the pretended grant of exclusive privileges under said charter, and after consultation with and under the advice of the highest law-officer of the government as to the validity of the said exclusive grant to said

pretended Pensacola Telegraph Company. And respondents avers that it has become the assignee for a valuable consideration of all the rights and privileges, eas'ments, property, and franchises of the Pensacola and Louisville Railroad Company, acquired and held under the said acts above referred to, and also of the exclusive right to use and occupy its right of way in the county of Escambia, in Florida, and in Alabama, for the construction, maintenance, and operation of its electric-telegraph line.

And respondent avers that under said acts and said assignment of the Pensacola & Louisville Railroad Company, as well as under an act of the Congress of the United States, approved 25th July, 1866, authorizing the construction & operation of telegraph-lines on post-routes of the United States, it has the right to construct, maintain, and operate a line of telegraph from Pensacola to the southern boundary-line of the State of Alabama, along and on the right of way of the said Pensacola & Louisville Railroad Company to the point of intersecting in Alabama with the M. & M. R'road, the same being a post-route of the United States, along which line respondent is now engaged in constructing a line of telegraph.

17 Respondent denies that this is the identical line on which the Pensacola Telegraph Company has had its line located since the year 1866, the line then being on the old line of the Alabama and Florida Railroad, terminating at Pollard, in Alabama, a distance of about 47 miles from Pensacola, and the present line of the said Pensacola Telegraph Company being on the line of the Pensacola and Louisville Railroad, which diverges from the Alabama & Florida Railroad nine miles south of Pollard, a distance of 37 miles from Pensacola, and following the line of the Pensacola & Louisville Railroad to its point of intersection with *with* the Mobile and Montgomery Railroad in the State of Alabama, a distance of about four miles from the point of divergance in a westerly direction from the line of the Alabama & Florida Railroad.

And respondent alleges that the said line of the Pensacola Telegraph Company extends into the State of Alabama on the right of way of the Pensacola and Louisville Railroad Company, and denies that the said telegraph company has any chartered rights in the State of Alabama or any permission to occupy and use the right of way in Alabama of the said Pensacola & Louisville Railroad Company.

Respondent cannot admit or deny that the erection of its line of telegraph will render the charter of the Pensacola Telegraph Company valueless to complainant, and again denies that the franchises of the said company constituted the sole inducement to the investment of the capital of its corporators, but that it is informed and believes that the line was originally constructed chiefly for the convenience of the corporators, who were merchants in Pensacola, requiring the use of such a line for the transaction of their own business, and that it also appears by the allegations of complainant's bill that the necessary capital had already been expended and the line of telegraph already erected and in operation before the enactment of the said charter of 1866, all of which respondent on information & belief avers to be true.

18 And respondent alleges that it is informed and believes that the said line was erected and constructed under a general act of incorporation in force in the State of Florida at the time and prior to the enactment of the charter of Dec., 1866, and does not admit but requires proof that the said company that constructed said line ever

accepted the charter of December, 1866, or expended any money under it beyond what was realized out of the income and profits of the original company, organized before the enactment of the charter of 1866; and respondent does not admit but requires proof that the Pensacola Telegraph Company ever acquired by proper conveyance the said line of telegraph and its franchises from Pensacola to the Alabama line from the company that constructed it.

And respondents further allege that the company now operating said line, under the name of the Pensacola Telegraph Company, have engaged a monopoly of the telegraph business in Escambia County for a long period of time, to wit, from the year 1866 to the present time, to the great injury and detrement of the general business and commerce of the city of Pensacola and the people of Escambia County and elsewhere having business with Pensacola; that the charges of the said company for telegraphing are exorbitant and oppressive, furnishing the best commentary on the wise and wholesome fundamental law of the commonwealth declaring "monopolies to be contrary to the genius of a free people, and (which) ought not to be allowed." (See bill of rights, constitution of 1866.) That the charge for ten words over the line, the length being about forty-four (44) miles, is one dollar, ($1.00,) and other messages in the same proportion, when on all connecting and neighboring lines the charges are about thirty cents, (30 c'ts.) That the charge from the end of this line to New Orleans is fifty cents, (50 c.;) to New York, one $\frac{85}{100}$ dollars, ($1\frac{85}{100}$;) and respondent alleges that the ad-
19 ditional charge on messages from this point (Pensacola) to New Orleans, New York, and other points over a line owned and operated by this respondent would be scarcely greater than from the end of the present line to those points, making the enormous charge now exacted on this line a clear tax upon the business and business-men of the city and upon those doing business here.

And respondent further alleges that the income and profits from this monopoly are largely in excess of any just return for the capital employed, amounting, as it's advised, to more than one hundred per cent. annually upon the capital invested.

And the respondent having fully answered asks to be hence dismissed with its reasonable costs, most unjustly expended.

C. C. YONGE & A. E. MAXWELL,
Solicitors for Respondents.

STATE OF ALABAMA,
City and County of Mobile:

Personally appeared before me C. G. Meriwether, superintendent of the Western Union Telegraph Company, who, being duly sworn, says the foregoing answer and the matters and things therein set forth are true, except the matters and things that are stated upon information, and which he believes to be true.

C. G. MERIWETHER,
Sup't W. U. Telegraph Co.

Sworn to & subscribed before me this 31st day of July, A. D. 1874.

W'M M. LOOMIS,
J. P., M. Co.

Filed Aug. 3, 1874.

M. P. DE RIOBOO, *Clerk.*

C. C. YONGE & A. E. MAXWELL,

Solicitors for Resp't.

And now, on this day, the 5th day of August, A. D. 1874, comes the complainants and filed the following replication, in the words and figures following, to wit:

Circuit court of the United States, northern district of Florida.

PENSACOLA TELEGRAPH COMPANY }
vs.
WESTERN UNION TEL. COMPANY. }

The replication of the Pensacola Telegraph Company, complainant, to the answer of the Western Union Telegraph Company, respondent:

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had as taken to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be annexed unto, and that the said answer of the respondent is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as and by its said bill it has already prayed.

C. W. JONES, R. L. CAMPBELL & G. A. STANLEY,
Compl't' Sol'rs.

(Endorsement:) Pens. Telegraph Company vs. Western Union Telegraph Company. Replication. Filed Aug. 5, 1874. M. P. de Rioboo, clerk.

Decretal order on motion for injunction.

U. S. circuit court, northern district of Florida, at Pensacola.

PENSACOLA TELEGRAPH COMPANY }
vs.
THE WESTERN UNION TELEGRAPH COMPANY. }

On this 11th day of August, A. D. 1874, at chambers, came the complainant in this cause and moved that a writ of injunction issue against defendant, according to the prayer of the bill of complaint, and submitted proof that notice of the time and place of making said motion had been served on the defendant according to law.

And both the complainant and defendant appearing by their solicitors, thereupon said motion came on to be heard upon the bill of complaint, the answer of defendant, the replication of complainant, and sundry affidavits and exhibits, and was argued by counsel.

On consideration thereof it is ordered that said motion be denied at the cost of complainants.

Witness my hand the day and year aforesaid.

W. B. WOODS,
U. S. Circuit Judge, Northern District of Florida.

Filed Sept. 19, 1874.

M. P. DE RIOBOO, *Clerk.*

21 And on this 17th Sept., 1874, comes the defendant and files the following affidavit and acceptance:

Vol. 1.

Circuit court of the United States, northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
against
THE WESTERN UNION TELEGRAPH COMPANY.

STATE OF NEW YORK,
City and County of New York, ss:

WILLIAM ORTON, being duly sworn, says:

I am president of the Western Union Telegraph Company, the defendant. This company is a corporation organized under the general laws of the State of New York, and authorized by such laws to construct, maintain, and operate telegraph-lines wholly within, or partly within and partly beyond, the limits of the State of New York.

It is the owner or lessee of, and is now engaged in operating, in connection with its lines in the State of New York, lines of telegraph in every State of the Union, including the State of Florida and the States adjacent thereto; and its lines are in immediate and working connection with various cables extending from the United States to foreign countries, including a cable from the coast of Florida to the island of Cuba, which is controlled by the Western Union Company, in the manner hereinafter described.

All of its said lines are largely used for the transmission by telegraph of intelligence between citizens of different States and citizens of the United States and foreign countries, relating to commerce between such persons and among the different States and with such foreign countries.

Within the last few years the telegraph has come to be and is now used extensively by all persons engaged in commerce among the
22 States and with foreign countries, and is indispensible to the successful and convenient operations of commerce between Pensacola and the city of New York, the port of Liverpool, and other principal ports and marked in foreign countries, and in States of the Union other than Florida.

The Western Union Telegraph Company is the only company in the United States which has complete lines extending from the State of Florida to the city of New York and beyond to the point of junction with the various foreign cable lines above referred to.

This company has long been desirous to establish direct telegraphic connection over its lines between the city of Pensacola and all other points in the United States and foreign countries which are reached by its lines or by its connections, and it has recently concluded arrangements with the Pensacola and Louisville Railroad Company by which it has acquired the right to build and maintain its lines upon the right of way and lands of said railroad company, and has begun and intends to continue, until restrained by order of this court, to erect as speedily as possible a telegraph-line from Pensacola Junction to the city of Pensacola, and to the navy-yard of the United States near that city, and to connect the said line to Pensacola Junction with its general system of telegraph lines, for the general purposes of commercial and other telegraphic intercourse between citizens of the State of Florida and other States and foreign countries.

The said Western Union Telegraph Company has also acquired by assignment from the Pensacola and Louisville Railroad Company all the property, franchises, and privileges conferred upon said railroad company by a certain act of the legislature of Florida, entitled "An act to amend an act entitled 'An act to authorize the Pensacola and
23 Louisville Railroad Company to construct, own, and operate a telegraph line upon their right of way,' approved Feb. 14, 1873," and passed Feb. 13, 1874, to which act deponent refers for more specific information of its term'.

The Western Union Telegraph Company on the fifth day of June, 1867, by its board of directors, duly met at its office in the city of New York, passed a resolution, a copy of which is hereto annexed, attached to a certificate by J. W. Marshall, Postmaster-General; which resolution was duly filed in the Post-Office Department at Washington, and by which resolution and filing this company accepted the restrictions and obligations of a certain act of Congress passed July 24th, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes."

Since such filing this company has acted under the restrictions and performed all the obligations of said act, and has given at all times priority to the messages in said act named, and has accepted for the services therein described the rates of compensation prescribed by the Postmaster-General, and is now and has long been performing such telegraph services for the United States.

As deponent is informed and believes, there is not at present any direct communication with the city of Pensacola by which the officers of the Government of the United States can communicate with the officers of the Army and Navy or other officials of the Government at Pensacola, and when the line of the defendant is completed to Pensacola communication to that point, from such officials at Washington, will be made subject to the act aforesaid and to the contracts now in existence concerning such service.

The International Ocean Telegraph Company is a corporation created and existing under the laws of the State of New York. I am
24 president of that company, and a majority of the capital stock of which is owned by the Western Union Telegraph Company, which also practically operates the cables and business of the International Ocean Company in connection with its own general business.

As I am informed and believe, the legislature of the State of Florida did, on the second day of January, 1866, pass a certain act entitled "An act to encourage telegraphic communication between the State of Florida, the island of Cuba, and other West India islands," which act was accepted and acted upon by the International Ocean Telegraph Company as one of the considerations for locating its lines and opening business between the coast of Florida and the island of Cuba. Said act, among other things, grants to the said International Ocean Telegraph Company, their associates, successors, and assigns, "the privilege and power to erect, construct, maintain, and operate telegraph lines through the State of Florida."

The cables of said International Ocean Telegraph Company have been laid, and are now in constant operation, connecting the State of Florida and the island of Cuba aforesaid.

WILLIAM ORTON.

Subscribed & sworn to before me this 8th day of August, 1874.

JOSEPH GUTMAN, J'R, UNITED STATES COMMISSIONER S. D. N. Y.

JOSEPH GUTMAN, J'R,
United States Commissioner.
Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Joseph Gutman, j'r, whose name is subscribed to the annexed affidavit, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a
25 United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court this 8th day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of these United States the ninety-nineth.

KENNETH G. WHITE,
Clerk.

[SEAL OF U. S. CIRCUIT COURT, SOUTHERN DIST. NEW YORK.]

UNITED STATES OF AMERICA:

POST-OFFICE DEPARTMENT,
Washington, D. C., August 4th, 1874.

I, J. W. Marshall, Postmaster-General of the United States of America, hereby certify that the annexed is a true copy of the original acceptance by the Western Union Telegraph Company of the act approved July 24, 1866, now on the files of this Department.

In witness whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the General Post-Office, in the city of Washington, the day and year above written.

J. W. MARSHALL,
Postmaster-General.

[POST-OFFICE DEPARTMENT, UNITED STATES OF AMERICA.]

WESTERN UNION TELEGRAPH COMPANY.

Meeting of the board of directors at the executive office, 145 Broadway, New York, June 5th, 1867.

26 Resolved, That this company does hereby accept the provisions of the act of Congress entitled "An act to aid in the construction of t elegraph-lines, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 24, 1866, with all the powers, privileges, restrictions, and obligations conferred and required thereby; and that the secretary be, and is hereby, authorized and directed to file this resolution with the Postmaster-General of the United States, duly attested by the signature of the acting president of the company, and the seal of the corporation, in compliance with the fourth section of said act of Congress.

Adopted unanimously.

(Signed) HIRAM SIBLEY,
Acting President of Western Union Telegraph Co.

(Signed) O. H. PALMER.
Sec'y W. U. Tel. Co.

[WESTERN UNION TELEGRAPH CO. SEAL.]

(Endorsement:) Certified copy. Acceptance by the Western Union Telegraph Company of the provisions of the act of Congress approved July 24th, 1866.

U. S. circuit court, northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
against
THE WESTERN UNION TELEGRAPH COMPANY.

Affidavit of William Orton, president of the defendant company, filed Sept. 17, 1874.

M. P. DE RIOBOO,
Clerk U. S. C't C't Nor. Dis. Florida, at Pensacola.

27 And now on this day, the 25th day of September, 1874, came the defendant, by its solicitors and filed the following amendment:

Amendment made at the hearing of the application for injunction before his honor W'm B. Woods, by leave of the court and consent of complainant's counsel.

The amendment to be on p. (7) seven, after the words "on post-routes of the U. States," to wit:

"The provisions of which said act of Congress have been formally and fully accepted by the said Western Union Telegraph Company, the said defendant."

C. C. YONGE,
Solicitor for D'f't.

Filed Sept. 25th, A. D. 1874.

M. P. DE RIOBOO,
Clerk.

And now on another day, to wit, the 18th January, A. D. 1875, the defendant filed the following petition in words and figures, to wit:

Bill for injunction.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

To Hon. W. B. Woods, judge of the circuit court of the United States for the northern district of Florida, at Pensacola:

The petition of the defendant respectfully shows to your honor that the original bill in the above-entitled case was filed on the 27th July, 1874, and amended bill on 30th July, 1874. That the answer of defendant was filed on the 3d August, and replication was filed on the 5th of August following. That on the 11th August a hearing was had before your honor on an application for an injunction, and on the 17th September a decretal order made by your honor denying the injunction was filed in said case.

Your petitioner represents to your honor that none of the officers of said company, the defendant, were informed or advised of the
28 filing of said replication till quite recently, and subsequent to the expiration of the time within which testimony could, by the rules and practice of the court, be taken. That defendant is informed &

believes their answer contains allegations material to their defence, and which require to be established by testimony which it is in the power of defendant to procure.

Your petitioner therefore prays that the time for taking testimony in the said cause be extended days from this date, with leave to take testimony by commissioners.

Your petitioner further represents that *the* this application is not made for the purpose of delaying the hearing of this cause, but only to enable defendants to have the benefit of their defence to complainant's bill, as set forth in their answer.

That defendant is willing to speed the cause and to submit to such terms on the extension of the time asked for as your honor may impose, should it appear that it is proper to impose any terms.

And your petitioner as in duty bound will ever pray, &c.

THE WESTERN UNION TELEGRAPH COMPANY,
P'r C. C. YONGE,
Solicitor.

STATE OF ALABAMA:

Personally appeared before me C. G. Merriwether, superintendent of the Western Union Telegraph Company, who, being duly sworn, that the allegations contained in the above petition are true.

C. G. MERRIWETHER.

Sworn to and subscribed before me this 14th day of January, A. D. 1875.

WM M. LOOMIS,
J. P. M. Co.

AT CHAMBERS, *Jan.* 15, 1875.

On consideration of the foregoing petition, it is ordered that the time for taking evidence in said cause be extended twenty days from this date, and within said time both parties are allowed to take further testimony.

W. B. WOODS,
U. S. Judge.

Filed Jan'y 18, 1875.

M. P. DE RIOBOO, *Clerk.*

29 And now on this day, the 26th day of January, A. D. 1875, the following petition was filed by the defendant's solicitor, to wit:

Northern district of Florida, 5th circuit, at Pensacola.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

The petition of the defendant respectfully represents that they desire to take the deposition of several witnesses residing in Pensacola and the city of New York, & perhaps elsewhere, and they pray that the clerk of the circuit court of the United States for the northern district of Florida, at Pensacola, be authorized to name commissioners.

And as in duty bound will ever pray, &c.

THE WESTERN UNION TELEGRAPH CO.
P'r C. C. YONGE,
Att'y & Solicitor.

JA'RY 18, 1875.

AT CHAMBERS, *Mobile, State of Ala., 5th circuit.*

It is hereby ordered that M. P. de Rioboo, esq., clerk of the circuit court of the United States for the northern district of Florida, at Pensacola, be, and he is hereby, vested with power to name commissioners to take testimony in like manner that the court or judge thereof can now do by the 67th rule of equity practice.

Jan'y 20, A. D. 1875.

W'M B. WOODS,
U. S. Circuit Judge for the Northern District of Florida.

Filed Jan'y 26, 1875.

M. P. DE RIOBOO, *Clerk.*

And now on this day, the 27th day of February, 1875, the following agreement was filed:

Circuit court of the United States for the northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

By consent of parties it is hereby agreed that publication of the testimony taken in this case may be made.

C. W. JONES,
R. L. CAMPBELL, &
G. A. STANLEY,
Pl'ff's Att'ys.
C. C. YONGE,
Solicitor for D'f't.

Filed Feb'y 27, 1875.

M. P. DE RIOBOO, *Clerk.*

30 On this day, to wit, the 1st day of March, 1875, came the complainant and filed the following order setting down cause for hearing:

Circuit court of the United States, northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

This cause, set down for a hearing by complainant on the 1st day of March, present, or as soon thereafter as counsel can be heard.

March 1, 1875.

R. L. CAMPBELL, &
G. A. STANLEY,
Compl't's Solicitors.

(Endorsement:) Pens. Tel. Co. vs. The Western Union Telegraph Company. Order setting down cause for hearing. Filed March 1, 1875. M. P. de Rioboo, clerk. R. L. Campbell & G. A. Stanley, compl't's sol's.

At a regular term of the circuit court of the United States, fifth judicial circuit, northern district of Florida, began and held at Pensacola, March 1st, 1875.

THURSDAY, *March 4th*, 1875.

Present, Hon. W'm B. Woods, judge, presiding.

PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } Bill for injunction.

Testimony introduced by complainant.

31 In the circuit court of the United States for the fifth judicial circuit, northern district of Florida, at the city of Pensacola.

By his honor Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Pensacola, to J. P. Jones and J. C. Avery, esquires, greeting:

Whereas there is a certain controversy now depending in the circuit court of the United States for the northern district of Florida, in said city of Pensacola, between the Pensacola Telegraph Company, plaintiff, and The Western Union Telegraph Company, defendant; and whereas Alexander C. Blount is a material witness in said case of controversy:

Now, know ye that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you or any two of you are hereby authorized and required to cause the said Alexander C. Blount personally to come before you, and, after being duly sworn, to examine him concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed, and the answers to the same being plainly and distinctly written, and you are to send the same, closed up under your hands and seals, to our said court, to be held on the first day of March next, together with this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Pensacola, this 5th day of February, A. D. 1875.

[SEAL.] M. P. DE RIOBOO, *Clerk.*

STATE OF FLORIDA,
Escambia County:

We, J. C. Avery and J. P. Jones, being duly sworn, say that we will execute the within commission upon the annexed interrogatories,
32 truly and impartially, according to law.

J. C. AVERY.
J. P. JONES.

Sworn to & subscribed before me this 5th Feb'y, 1875.

M. P. DE RIOBOO,
J. P., E. Co.

Circuit court of the United States for the northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Interrogatories for A. C. Blount, a material witness on the part of the plaintiff.

1st. State whether the plaintiff's line of electric telegraph extended along the right of way formerly owned by the Alabama and Florida R.

R. Company at the time when the said railway became the property of the Pensacola & Louisville R. R. Company.

2d. Did the Pensacola & Louisville R. R. Company make use of the plaintiff's said line of telegraph after the Pensacola & Louisville R. R. Company became the assignee of the Alabama and Florida R. R. Company; and, if so, on what terms and for how long a time was it so used?

3d. State whether, as president of the Pensacola & Louisville R. R. Company, you received a proposition from the plaintiff for a sale of the said line of telegraph by the plaintiff to the Pensacola & Louisville R. R. Company to W'm E. Richardson; if yea, state what said proposition was; state fully all that occurred on the subject.

4th. If you know anything further of interest to the plaintiff and material to the case, set forth the same fully.

C. W. JONES,
R. L. CAMPBELL, &
G. A. STANLEY.

33 Cross-interrogatories for A. C. Blount.

1st cross. Please state whether, within your knowledge, any agreement was ever made with the Pensacola Telegraph Company conceding to them the right to use the right of way of the Pensacola & Louisville Railroad Company for the erection of their poles and operation of their line; and, if so, please state whether the same was in writing, and, if so, append a copy the contract.

Lastly, state anything else you know that will be of benefit to the defendant.

C. C. YONGE & A. E. MAXWELL,
Solicitors for Def't.

(Endorsement:) Filed Feb'y 4, 1875. M. P. de Rioboo, clerk.

Deposition of A. C. Blount.

1. Answering the 1st direct interrogatory, A. C. Blount saith: It did.

2. Answering the 2nd direct interrogatory, he saith: It did make use of it whenever the necessity of the railroad company required, and free of charge. This courtesy was mutual between the companies, and without express agreement. It was so used as long as I was president of the road; beyond that time I am not informed.

3. To the third interrogatory he answers: I received instructions from W'm A. Richardson, the majority stockholder of the Pensacola & Louisville Railroad Company, to make inquiry at what sum and upon what terms this telegraph-line could be purchased for the Pensacola and Louisville R. R. Co. In accordance therewith, I had several interviews with M'r Thornton, the operator of the telegraph-line, who in-
34 formed me that said line cost about five thousand dollars originally; that he thought it might be purchased for that sum or thereabout. And, in the course of these conversations, he informed me that line paid about forty per cent. upon the investment. The facts I communicated to M'r Richardson, and no further action having been taken by him, all negotiations on my part here ended. I never, as president of the P. & L. R. R. Co., received any proposition for the sale of said telegraph-line from plaintiff.

4. Answering fourth interrogatory, (direct,) he saith: I can state nothing further that I know will be of advantage to the plaintiff.

Cross-interrogatories:

1. To the first cross-interrogatory, A. C. Blount saith: To my knowledge there was no agreement of that character made between the two companies.

2. To the second cross-interrogatory he saith: Nothing occurs to me at present that will benefit the defendant.

A. C. BLOUNT.

Sworn and subscribed to before us this 5th day of Feb'y, A. D. 1875.

J. C. AVERY & J. P. JONES,
Commissioners.

STATE OF FLORIDA,
Escambia County:

We, J. P. Jones & J. C. Avery, the undersigned, commissioners named in said city of Pensacola commission, hereby certify that we are personally acquainted with the said witness, A. C. Blount, and know him to be the identical person named in said commission; that he was sworn and examined, as above stated, and that his evidence was taken down, as near as might be, in his own language, and was subscribed by him in our presence this 5th day of February, A. D. 1875, at the place above stated.

[SEAL.] J. C. AVERY,
[SEAL.] J. P. JONES,
Commissioners.

35 In the circuit court of the United States for fifth judicial circuit, northern district of Florida, at the city of Pensacola.

By his honor Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Pensecola, to J. C. Avery and J. P. Jones, greeting:

Whereas there is a certain controversy now depending in the circuit court of the United States for the northern district of Florida, in said city of Pensacola, between the Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendant, and whereas C. L. Le Baron, O. M. Avery, and M. Palmes material witnesses in said case of controversy:

Now know ye that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you or any two of you are hereby authorized and required to cause the said C. L. Le Baron, O. M. Avery, and M. Palmes personally to come before you, and, after being duly sworn, to examine *him* concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed, and the answers to the same being plainly and distinctly written, and you are to send the same, closed up under your hands and seals, to our said court, to be held on the first day of March next, together with this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Pensacola, this 3d day of February, A. D. 1875.

[SEAL] M. P. DE RIOBOO, *Clerk.*

STATE OF FLORIDA,
Escambia County:

We, J. C. Avery & J. P. Jones, being duly sworn, say, that we will

execute the within commission upon the annexed interrogatories
36 truly and impartially according to law.

J. C. AVERY.
J. P. JONES.

Sworn to and subscribed before me this 5th day of February, A. D 1875.

[L. S.] M. P. DE RIOBOO,
J. P. Es. Co.

Circuit court of the United States for the northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Interrogatories for C. L. Le Baron, as material witness for plaintiff.

1st. State whether you are an officer of the Pensacola Telegraph Company, plaintiff in this suit; if yea, how long have you been so? State how and when said company was organized. State whether a charter was obtained for said company; and, if so, state when the same was granted; and was said charter accepted by the said company? If yea, was said acceptance shown by the records of its proceedings? If so, append to your testimony such portions of the records of said company.

2d. State whether or not there has been in existence at any time since the 10th of January, 1866, any other electric telegraph company in the counties of Escambia and Santa Rosa besides the plaintiff known as the Pensacola Telegraph Company.

Interrogatories for C. L. Le Baron, O. M. Avery, & M. Palmes.

1st. State whether plaintiff's line of electric telegraph from
37 Pensacola to the southern boundary of Alabama extends through the county of Escambia, Florida, and along the right of way of the railway formerly owned by the Alabama and Florida R. R. Company. If yea, has the same been so located since 1866?

2d. State whether the said Alabama and Florida R. R. Company used the plaintiff's line of telegraph up to the time it went into bankruptcy. If yea, on what terms was it so used? State what were your relations to the said railroad co. or the said plaintiff, and the means of your information.

Interrogatories for C. L. Le Baron and M. Palmes.

1st. State whether plaintiff's said line of electric telegraph has extended along the right of way formerly owned by the Alabama & Florida R. R. Company, ever since said railway became the property of the Pensacola & Louisville R. R. Company.

2d. State whether the said Pensacola and Louisville R. R. Company made use of the plaintiff's said line of telegraph after it became the assignee of the said Alabama & Florida R. R. Company; and, if so, on what terms and for how long a time was it so used.

4th. If you know anything further of interest to the plaintiff material to the case, set forth the same fully.

C. W. JONES,
R. L. CAMPBELL, AND
G. A. STANLEY,
Sol's for Plaintiff.

Filed Feb'y 3, 1875.

M. P. DE RIOBOO, *Clerk.*

Cross-interrogatories for C. L. Le Baron.

1. Please state when the line of telegraph from Pensacola,
38 Florida, to Pollard, Ala., on the line of the Ala. & Fla. R. Road was first erected, and state how long the same was operated and under what name; and state whether the company then owning & operating it was incorporated; and, if so, under what law. State who were the corporators.

2d. State whether said line of telegraph was kept up during the late war, and, if not, how soon after the war was the line reconstructed and under what name.

3d. State who are the corporators of the company known as the Pensacola Telegraph Company, under the charter of 1866, and append hereto a copy of the subscription to stock made under that charter, if any was made, including date of such subscription.

4th. State whether the line of telegraph between Pensacola & Pollard, constructed previous to 11th Dec., 1866, is the same as that now owned by the Pensacola Telegraph Company, now being operated, and append hereto a copy of any assignment or transfer, if any was made, of the former line and its property and franchises to the company now operating said line.

C. C. YONGE & A. E. MAXWELL,
Solicitors for D'f't.

Depositions of C. L. Le Baron.

C. L. LeBaron, answering the 1st interrogatory, saith: I am president of the Pensacola Telegraph Company; have been so since its organization. The said company was organized December 1, 1865. The company was organized, as shown by Exhibit A, hereto attached, which is a true copy of the original records of the Pensacola Telegraph Company. A charter was obtained for the company. At the first meeting of the directory, after the organization of the company, January 2d, 1866, Mess'rs Campbell & Perry, attorneys, were employed to prepare
39 a charter, which was presented to the legislature at its next session and passed, and approved by the governor December 11, 1866; which said charter was accepted by said company, as shown by Exhibits B, C, & D, hereto attached, which are true copies from the original records of said company.

2d. Answering the second direct interrogatory, he saith: None.

Interrogatories for C. L. Le Baron and M. Palmes & O. M. Avery.

1. To the first of said direct interrogatories C. L. Le Baron saith: It does. It has been so located since 1866.

2. To the 2d of said direct interrogatories he saith: It did. It was so used, free of all charges. And the railroad company had free use of the line for company business. I was president of the telegraph company, and the arrangements were made by me with the officers of the railroad company.

Interrogatories for C. L. Baron and M. Palmes.

1. To the first of said direct interrogatories C. L. Baron saith: It has

2. To the second of said direct interrogatories he saith: The Pensacola & Louisville R. R. Co. continued to use the said line of telegraph and had free use of the same, from the time of its purchase of said rail way up to some time in the early part of 1873.

40 To the third of said direct interrogatories he saith: Under an

arrangement with M'r Hyer, then vice-president of said Pensacola & Louisville R. R. Company, the plaintiff constructed a telegraph-line from Pollard, Alabama, to the junction of which the P. & L. R. R. Company had free use. And the operator at the said Pensacola Junction was paid jointly by the said plaintiff & P. & L. R. R. Company.

In addition to that already stated, the said plaintiff has constructed about thirty-five miles of line to different points in Escambia, & about fifteen miles in Santa Rosa County.

The Pensacola & Louisville R. R. Company had free use of plaintiff's line until the time of said R. R. company's application to the legislature of Florida for a charter to establish a telegraph line in opposition to plaintiff.

Cross-interrogatory:

1. To the first cross-interrogatory C. L. Le Baron saith: In 1859, in months of November & December. The whole line was operated until May, 1862, and a portion of it until December, 1864, as more fully shown by Exhibit A hereto attached, under name of the Pensacola Telegraph Company. The company then owning it was organized under articles of agreement or association, and filed for record in Tallahassee, as I was informed was necessary to be done. I file herewith a true copy of the articles of agreement, with the names of members of said association, hereto attached as part of my answer to this interrogatory and marked "Exhibit E."

2. To the second cross-interrogatory he saith: It was kept up in whole or in part until 1864. It was not reconstructed, but a new
41 company formed under the same name, as more fully shown in detail by Exhibit A, hereto attached.

3. To the third cross-interrogatory he saith: The name of the incorporators are W. H. Judah, Charles L. Le Baron, E. E. Simpson, John Brosnaham, Samuel McClellan, W'm J. Keyser, J. G. Thornton, & H. L. Avery. Subscription was made Dec. 1st, 1865, as shown with the account in Exhibit A, hereto attached, which is a true copy from the records of the first meeting of said company.

4. To the fourth cross-interrogatory he saith: The line of telegraph from Pensacola to Pollard, completed January 2d, 1866, is the same line owned by the Pensacola Telegraph Company, and was built by said company after its organization, December 2d, 1865. Said company, at its organization, assumed the name of the Pensacola Telegraph Company, and immediately made application to the legislature for a charter, giving it corporate rights and franchises. Said charter was obtained at the next session of the legislature thereafter and approved December 11th, 1866. Under that charter the line has since been almost entirely rebuilt, and about 50 miles of additional line built in this and Santa Rosa County; the corporators named in the charter being the same as those who organized the original company, with the exception of Anderson, Hyer & Co., who sold out to M'r's C. H. Thornton. There was no necessity for any transfer, and none was made. The transfer of stock of Mess'rs Anderson, Hyer & Co. is shown by exhibits B & C hereto attached and above referred to.

C. L. LE BARON.

Sworn to and subscribed to before us this 5th day of Feb'y, A. D. 1875.

J. C. AVERY,
J. P. JONES,
Commissioners.

42 EXHIBIT A.

PENSACOLA, FLORIDA,
Dec'r 1, 1865.

At a meeting of the stockholders of the (old) Pensacola Telegraph Company this day, the following gentlemen were present: Judah & Le Baron, L. M. Merritt, (by Anderson, Hyer & Co.,) E. E. Simpson, John Brosnaham, Sam'l McClelland, O'Dowd & Sullivan, N. O., (by Judah & Le Baron,) E. D. Peters & Co., Boston, (by Judah & Le Baron,) B. M. & E. A. Whitlock & Co., N. Y., (by Judah & Le Baron,) & J. G. Thornton.

The secretary was called upon for a report of condition of company, which was read and approved, and on motion of M'r Simpson, ordered to be spread upon the records, which is as follows:

To C. L. LE BARON, *President:*

SIR: The following is my report of condition of company:

Upon evacuation of Pensacola by Confederate troops, May 9, 1862, the wire belonging to the Pensacola Telegraph Company was taken down, coiled, and sent to Pollard, Alabama, as fast as the army retreated, discontinuing the work at Cooper's Station, twenty-three miles from Pensacola. One of the company's operators remained at the southern terminus of the line, being stationed at Cooper's Station, Pine Barren, Camp Lomax, and Bluff Springs, as the commander would direct, until December, 1864, when that section of country was occupied by the enemy and the line abandoned.

The twenty-three miles of wire taken down and sent to Pollard was taken possession of by the Confederate States government. That between Cooper's Station and Pollard was badly broken up by
43 the enemy and only a portion of it was saved.

The wire, with poles, remaining on route, instruments, and books, are valued at 534$ currency, the company's only available assets.

The treasurer has $776.64 on hand in Confederate notes, and the office buildings, outhouses, &c., in the city of Pensacola, were destroyed by fire during the war, valued at original cost, $462.46.

Respectfully submitted.

(Signed) J. G. THORNTON,
Sec' 'y.

M'r Le Baron here spoke and said the assets of the company were insufficient to rebuild the line, and moved that a new company be formed, to be styled after the old one, Pensacola Telegraph Company; that this company purchase the property of the old company at valuation contained in preceding report, and the amount divided pro rata among the old stockholders; also that the capital stock of this company be 5,000$, and the number of shares 100, being 50$ per share. All of which was adopted.

Upon balloting for directors the following gentlemen were elected to the directory for the year 1866: W'm J. Keyser, W'm H. Judah, C. L. Le Baron, E. E. Simpson, and W'm K. Hyer.

Those subscribing to the new stock are as follows:

Judah & LeBaron,	51	shares, @	50$	2,550
Anderson, Hyer & Co.,	10	"	50	500
E. E. Simpson,	12	"	"	600
W'm J. Keyser,	20	"	"	1,000

Sam'l M'Clellan,	4	"	"	200
A. L. Avery,	2	"	"	100
John Brosnaham,	1	"	"	50
	100 shares,		50$	5,000

(Signed) C. L. LE BARON,
Upon motion Mr. Keyser, the meeting adjourned.
Chairman.

(Signed) J. G. THORNTON, *Sec't'y.*

44 EXHIBIT B.

PENSACOLA, FLORIDA, *Jan'y* 2, 1866.

Meeting of stockholders.

Pursuant to call, a meeting of the directors of the Pensacola Telegraph Company, was held at the company's office, in this city, this day. All present except M'r Hyer.

Completion of line from P. to P. Sal/aries.

M'r Le Baron announced to the board the completion of the line from Pollard to this place, and said he had fixed the sal/ary of Pensacola office at 100$ per month, and the Pollard office at 50$ per month; which action was confirmed by the board. He also stated that the line would be continued to the navy-yard as soon as the wire could be obtained, and asked the board for authority to purchase of M'r Greenwood about 2,000 lbs. of old wire, (the estimated amount required to complete line to yard,) at eight cents per pound, which was granted.

Construction of line.

Purchase of wire for yard-line.

Attorneys to draw up charter.

M'r Judah moved, and it was agreed, that Mess'rs Campbell and Perry, attorneys, be employed to draw up a charter for the company, to be presented to Florida legislature for passage; and that the apportionment of stock to be changed to fifty shares, at 100$ per share, instead of one hundred shares at 50$ per share.

Change of apportionment of stock.

Election of officers.

The names of C. L. Le Baron for president, and J. G. Thornton for secretary and treasurer, were presented by M'r Simpson & concurred in by the board.

On motion the meeting adjourned.

(Signed) C. L. LE BARON,
President.

(Signed) J. G. THORNTON, *Secretary.*

NOTE.—Before the charter was presented to the legislature the stock belonging to Anderson, Hyer & Co. was purchased by M'r's C. H. Thornton, and the name of J. G. Thornton appears for C. H. Thornton in the place of Anderson, Hyer & Co. in the charter.

(Signed) J. G. THORNTON, *Secretary.*

45 EXHIBIT C.

PENSACOLA, FLORIDA, *July* 14, 1866.

Meeting of directors.

Pursuant to call, a meeting of the directors was held at the company's office this day.

Present, Mess'rs Judah, Le Baron, and Simpson.

Change in stockholders of directors.

As the stock registered "Anderson, Hyer & Co." has been purchased by M'r's Thornton, M'r Le Baron suggested the name of M'r Thornton as director, in the stead of W'm K.

Hyer, in the vacancy thus occasioned by the stock of Anderson, Hyer & Co. changing hands. Adopted. He also announced the names of the stockholders as presented in the charter to the legislature, to be as follows:

Names of stockholders as presented in charter.

W'm H. Judah, Charles L. Le Baron, E. E. Simpson, John Brosnaham, Sam'l McClelland, W'm J. Keyser, J. G. Thornton, and A. L. Avery.

Completion of line to yard.

The completion and operation of the line to the navy-yard was also announced.

Adj'd.

Nothing further coming before the board the meeting adjourned.

(Signed) C. L. LE BARON,
President.

(Signed) J. G. THORNTON, *Secret'y.*

46 EXHIBIT D.

PENSACOLA, FLORIDA, *Jan'ry* 2, 1868.

Meeting of directors. Present.

A call meeting of the directors of the Pensacola Telegraph Company was held this day at the company's office in this city. Present, Mess'rs Judah, Le Baron, Simpson, & Thornton.

Secretary report.

The secretary presented his report—a balance-sheet of his books for year ending Dec'r 31, 1867—which is as follows:

Cash	607 27	
Expense	3,651 57	
Income		4,154 08
Profit & loss		104 76
	$4,258 84	$4,258 84

Cash on hand.

M'r Thornton said the $607.27, in the secretary's report, was cash on hand to the company's credit, on deposit at Mess'rs Judah & Le Baron'.

Dividend.

M'r Simpson moved that the balance of cash on hand be divided, as a dividend, pro rata, among the stockholders, which was adopted; and the treasurer was instructed to make the division immediately.

Notice to stockholders.

As no meeting of the directors has been held since July, 1866, the secretary was instructed to notify the stockholders of the change in the apportionment of stock, and also that the charter drawn up by Mess'rs Campbell and Perry, attorneys, as per order of board, Jan'y 2, 1866, passed the lower house December 1, 1866, and the upper house Dec'r 6, 1866, and approved by the governor Dec. 11, 1866.

Passage of charter.

M'r Le Baron was elected president for ensuing year, and M'r Thornton secretary & treasurer.

Adj't.

On motion the meeting adjourned.

(Signed) C. L. LE BARON.
President.

(Signed) J. G. THORNTON, *Secretary.*

47 EXHIBIT E.

STATE OF FLORIDA,
Escambia County:

This is to certify that we, the undersigned, a majority of whom are citizens of the State aforesaid, have formed ourselves into a company,

the corporate name of which we style "The Pensacola Telegraph Company," the objects for which said company is formed being to construct and operate a line of Morse's electric magnetic telegraph between Pensacola, Florida, and Blakely, Alabama.

The amount subscribed by each is that put opposite his name signed hereto.

The amount of capital stock is five thousand dollars, and the number of shares of which said stock is to consist is one hundred, being the rate of fifty dollars per share.

The names of the directors of said company, for the first year, are as follows:

1. C. L. Le Baron.
2. A. E. Maxwell.
3. L. M. Merritt.
4. A. L. Avery.
5. L. F. Zantzinger.

The said telegraph-line will run from Pensacola, in this State, along the Alabama and Florida Railroad, & thence along said last mentioned road to the Perdido River, at or near Hall's bridge, on said river, the eastern end of which said bridge is also in this State.

In witness whereof we hereunto set our signatures and the amount of each of our subscriptions, this 12th day of November, 1859.

(Signed)	Judah & LeBaron, Pensacola	20	shares.
"	A. E. Maxwell, Oakfield	5	"
"	L. M. Merritt & Co., Pensacola	5	"
"	A. L. Avery "	2	"
"	E. E. Simpson & C., per Judah & Le Baron, Bagdad	10	"
48 "	Ed. D. Peters & Co., per Judah & Le Baron, Boston	5	"
"	O'Dowd & Sullivan, per Judah & Le Baron, New Orleans	2	"
"	W. H. Baker, Pensacola	2	"
"	W. H. Wisdom "	1	"
"	C. C. Yonge, Oakfield	2	"
"	W. L. Cozzins, Pensacola	2	"
"	John Brosnaham, "	1	"
"	P. M. Hatch, "	1	"
"	R. L. Campbell, Oakfield	2	"
"	Spotswood & Moreno, Pensacola	2	"
"	B. D. Wright, "	2	"
"	Sam'l McClelland, "	2	"
"	Francis Bolie, "	1	"
"	C. P. Knapp, "	2	"
"	B. M. & E. A. Whitlock & Co., per Judah & Le Baron, New York	5	"
"	A. T. Ymestra, Pensacola	1	"
"	W. Tanner, per C. L. Le Baron, Mobile	10	"
"	L. F. Zantzinger, per C. L. Le Baron, Mobile	10	"
"	I. T. Caldwell, per C. L. Le Baron, Pensacola	1	"
"	S. R. Mallory, p'r C. L. Le Baron, "	2	"
"	Mir & McVoy, p'r C. L. Le Baron, Milton	2	"
		100	

50$ per share, $5,000.

Deposition of O. M. Avery.

1. To the first interrogatory he saith: The said line does run through the county of Escambia and formerly ran along the right of way of the Alabama & Florida Railroad Company. I am not sure that
49 the line follows the same right of way throughout, at this time.

2. To the second direct interrogatory he saith: It did, free of charge. I was superintendant of the road up to the spring of 1862, and from that time on to 1867 president and general superintendant; my means of information were my position as president and superintendant.

3d. To the third direct interrogatory he said: He knows nothing more.

O. M. AVERY.

Sworn to and subscribed before us this 5th day of February, A. D. 1875.

J. P. JONES & J. C. AVERY,
Commissioners.

Interrogatories for C. L. Le Baron, O. M. Avery & M. Palmes.

Depositions of M. Palmes.

1. To the first direct interrogatory Mr. Palmes, answering saith: It does & has been so located since 1866.

2. To the second direct interrogatory he saith: It did, free of charge. I was freight agent of said R. R. Company; my means of information was my said position.

Interrogatories for C. L. Le Baron & M. Palmes.

1. To the first direct interrogatory M. Palmes saith: It has.

2. To the second direct interrogatory he saith: It did, free of charge, from the 1st of August, A. D. 1870, until about the winter of
50 1873, as near as I can recollect.

3. To the third direct interrogatory he saith: Nothing further occur' to me of benefit to the plaintiff.

M. PALMES.

Sworn to and subscribed before us this 5th day of February, A. D. 1875.

J. C. AVERY & J. P. JONES,
Commissioners.

STATE OF FLORIDA, *Escambia County, City of Pensacola:*

We, J. P. Jones & J. C. Avery, the undersigned commissioners in said commission named, hereby certify that we are personally acquainted with the said witnesses, C. L. Le Baron, M. Palmes, & O. M. Avery, and known them to be the identical persons named in said commission; that they were sworn and examined as above stated, and that their evidence was taken down as near as might be in their own language; and was subscribed by them in our presence this the 5th day of February, A. D. 1875, at the place above stated.

[SEAL.] J. C. AVERY,
[SEAL.] J. P. JONES,
Commissioners.

51 *Testimony introduced by defendant.*

In the circuit court of the United States for fifth judicial circuit, northern district of Florida, at the city of Pensacola.

By his honor Morrison R. Waite, Chief-Justice of the Supreme Court of the United States at Pensacola, to William A. Blount and P. K. Yonge, greeting:

Whereas there is a certain controversy now depending in the circuit court of the United States for the northern district of Florida, in said city of Pensacola, between The Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendant; and whereas Albert Hyer, H. Baars, Henry Knowles, L. P. Knowles, C. C. Yonge, Peter Knowles, and W. K. Hyer, W. C. Cooke, William F. Lee, and T. E. Jordan, are material witnesses in said case of controversy:

Now know ye that we, reposing special trust and confidence in your prudence and fidelity have appointed you, and you, or any two of you are hereby authorized and required to cause the said Albert Hyer, H. Baars, Henry Knowles, L. P. Knowles, C. C. Yonge, Peter Knowles, & W. K. Hyer, W. C. Cooke, W. F. Lee, and T. E. Jordan, personally to come before you, and, after being duly sworn, to examine them concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed, and the answers to the same being plainly and distinctly written, & you are to send the same, closed up under your hands and seals, to our said court, to be held on the first day of March next, together with this wit.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Pensacola, this 30th day of January, A. D. 1875.

[SEAL.] M. P. DE RIOBOO, *Clerk.*

52 STATE OF FLORIDA, *Escambia County:*

We, W'm A. Blount and P. K. Yonge, being duly sworn, say that we will execute the within commission upon the annexed interrogatories truly and impartially, according to law.

W. A. BLOUNT.
P. K. YONGE.

Sworn to and subscribed before me this 1st day of Feb'y, A. D. 1875.

[SEAL.] M. P. DE RIOBOO, *J. P. Es. C.*

The circuit court of the United States for northern district of Fla., at Pensacola.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Interrogatories for W'm F. Lee, T. E. Jordan, material witnesses for defendant.

Interrogatories for Louis P. Knowles.

1. Please look at the accompanying deed, marked "A," made by E. McCounin, referree, to A. E. Maxwell, trustee, and state whether you are a subscribing witness to the same; and, if so, was it executed in your presence.

Interrogatories for Henry H. Knowles & C. C. Yonge.

1. Look at the accompanying deed marked "B," from A. E. Maxwell, trustee to the Pensacola & Louisville R. R. Company, and state whether *whether* you are a subscribing witness to the same; and, if so, state whether it was executed in your presence.

Interrogatories for L. P. Knowles.

1. Look at the accompanying contract & agreement between the Pensacola & Louisville R. R. Co. and the Western Union Tele-
53 graph Company, marked "C," and state whether you are a subscribing witness to the same; and, if so, state whether it was executed in your presence.

Interrogatories for W. F. Lee.

1. State what is your profession, age, and occupation.

2d. Please describe the route of the Alabama & Florida Railroad and its termini, and state whether the route of the Pensacola & Louisville Railroad, and state if they are the same; and, if not, in what do they differ.

3d. Please describe the route of the Pensacola Telegraph Line leading to the southern boundary-line of Alabama, in the direction of Montgomery, and the route of the Western Union Telegraph Line to the Pensacola Junction, and state whether each line is on the right of way of the Alabama & Florida Railroad Company as originally located, and on the right of way of the Pensacola & Louisville Railroad Company; and, if not, state how the same are located.

4. Please state when the Alabama & Florida Railroad was located and when completed, and when the Pensacola & Louisville Railroad was located and when completed, and how long each road has been operated.

Interrogatories for H. Baars, W. K. Hyer, Peter Knowles, W. C. Cooke.

Int. 1st. State when the line of telegraph now being operated by the Pensacola Telegraph Company was first constructed from Pensacola to Pollard, and by what company; and, if incorporated, state how & when.

Int. 2d. State whether said line of telegraph was continuously operated from the time of its erection; and, if not, state what suspensions occurred and the cause thereof, and state whether said line has been a profitable one from the beginning.

Int. 3d. State whether said line extends into the State of Ala.; and, if so, what portion of it.

Int. 4th. State whether said company has enjoyed a monopoly of telegraphing in Escambia County, Florida; and, if so, how long.

5th. State whether the said monopoly, if any existed, has op-
54 erated beneficially or injuriously to the business community of Pensacola & Escambia County.

6th. State what has been and is the rate of charges of said complainant for transmission of messages on said line, as compared with other neighboring lines; and what is the rate of charges of the defendant on their line between Pensacola and Pollard, Pensacola Junction, Mobile, New Orleans, & New York.

7. State as nearly as you can to what extent *of* the business community of Pensacola has been taxed by the charges of said complainant over and above the usual charges of neighboring lines for transmission of messages or equivalent distance.

8. State whether the country traversed by the said line of said complainant is of such character as to make the construction of its line more than usually expensive. State the necessary cost per mile approximately.

9. State whether the Pensacola & Louisville Railroad, extending from Pensacola to the Alabama line, and along which the telegraph-line of defendant is erected, is a post-route of the United States; and, if so, how long it has been such post-route.

Interrogatories Albert Hyer & T. E. Jordan, as officers of P. & L. Co.

1. State whether you are officers of the Pensacola & Louisville Railroad Company, and what offices, respectively, & how long you have been connected with said company.

2. State whether the said Pen. & Louisville Railroad Company has at any time granted and assigned to the Pensacola Telegraph Company the use of its right of way on its lands for the erection and operation of its line of telegraph.

Lastly, to all of the above-named witnesses: Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

C. C. YONGE & A. E. MAXWELL,
Solicitors for Def't.

55 Circuit court of the United States for the northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Cross-interrogatories, on behalf of the plaintiff, to be addressed to William F. Lee, Albert Hyer, Thomas E. Jordan, William C. Cooke, and William K. Hyer, witnesses on behalf of defendant.

First. Has there been in existence, at any time since 10th of January, 1866, any other electric-telegraph company in the counties of Escambia or S't Rosa, besides the plaintiff, known as the Pensacola Telegraph Company?

Second. Does not the plaintiff' line of electric telegraph from Pensacola to the southern boundary of Alabama extend through the county of Escambia, Florida, and along the right of way of the railway formerly owned by the Alabama & Florida Railroad Company; if yea, has it not been so situated since 1866?

Third. Did not said Alabama & Florida Railroad Company use the plaintiff's said line of telegraph up to the time it went into bankruptcy; &, if so, on what terms was it so used?

Fourth. Has not the plaintiff's said line of telegraph extended along the right of way of said railway ever since said railway became the property of the Pensacola & Louisville Railroad Company?

Fifth. Did the Pensacola & Louisville Railroad Company make use of the plaintiff's said telegraph-line after said railroad company became

the assignee of the Alabama & Florida Railroad Company; and,
56 if so, on what terms, & for how long a time was it so used?

Sixth. When, if ever, did the Pensacola & Louisville Railroad Company first object to the use of its right of way by the plaintiff? By what officer or officers of said company was the objection made? Was the objection communicated to the plaintiff or its officers; &, if so, when and by whom?

Seventh. Has the plaintiff established and operated lines of telegraph between the city of Pensacola and Milton, S't Rosa County, Florida; & between Pensacola and Warington and Milvue, Escambia County, Florida; if yea, when were these lines established? Were they established within the past year, two years, three years, or four years, or since 1866?

Eighth. Has not the said plaintiff's lines of telegraph, since 1866, been so connected with the telegraph system of the United States as to be available for the transmission of telegrams to & from all parts of the world accessible to communication by that system?

Addition' X-interrogatories to be propounded to T. E. Jordan and Albert Hyer.

Ninth. If in answer to the second direct interrogatory addressed to you by defendant you should say that the Pensacola and Louisville Railroad Company has not "granted" or "assigned" to the plaintiff the use of its right of way, state explicitly what you mean; whether you intend to assert simply that there was no written grant or assignment, or whether you intend to assert that there never was any express or implied assent to or recognition of such use by the said railroad company, and that such use was continued by plaintiff after the said Pensacola & Louisville Railroad Company became the assignee of the rights of the Alabama and Florida Railroad Company against the known objections of said Pensacola & Louisville Railroad Company.

57 Tenth. If you say that plaintiffs continued such use of said right of way in spite of the objections of said Pensacola & Louisville Railroad Company, please state when said objections were first made known to plaintiff or its officers; in what manner they were so made known; by whom made known; under what authority did such person act?

C. W. JONES,
G. A. STANLEY, &
R. L. CAMPBELL,
Sol's for Compl't.

(Endorsement:) Filed Jan. 20th, 1875. M. P. de Rioboo, clerk.

A.

STATE OF FLORIDA, *Escambia County:*

This indenture witnesseth that whereas by virtue of a judgment rendered on the 31st day of May, A. D. 1872, in Escambia County circuit court, in case of Peyton Jauden and J. C. B. Davis, trustees of the first-mortgage bonds of the Alabama and Florida Railroad Company vs. The Alabama and Florida Railroad Company, John T. Milner, adm'r, Sam'l G. Jones, Edward Broughton, and others, after due and legal notice of sale on the 5th day of August, A. D. 1872, the undersigned, a referee appointed by the court, did expose to sale at public auction, before the

door of the court-house in Pensacola, Florida, the following-described property, to wit:

All the several pieces or parcels of land being the roadway, stations, and depots of the Alabama and Florida Railroad from the southern terminus thereof, in the city of Pensacola, to the northern terminus thereof, in the State of Alabama, together with all and singular the stations, depots, buildings, engine-houses, road-bed, superstructure, track, and other improvements and constructions thereon, and all the appur-
58 tenances necessary for the complete use of the said road; also all the locomotives, cars, and other rolling-stock, together with all the rights, privileges, easements, and franchises of the said company and the lands particularly described in Schedule A, hereto annexed, lying in the county of Escambia, State of Florida, and also the lands particularly described in Schedule B, hereto annexed, lying in Santa Rosa County, State of Florida, and the said Alabama and Florida Railroad stations, depots, buildings, engine-houses, road-bed, superstructure, tract, and other improvements and constructions thereon, and all the appurtenances thereunto belonging, locomotives, cars, and other rolling-stock, and all the rights, privileges, easements, and franchises of the said company were bid off at the sum of sixty-six thousand dollars, and the lands in Schedule A were bid off at the sum of seven thousand one hundred and twenty-three dollars and three cents in the aggregate, the same having been sold by sections and parts of sections. And the lands described in Schedule B were bid off at the sum of three thousand seven hundred and ninety-three dollars and eleven cents in the aggregate, the same having been sold by sections and parts of sections, all of said property having been bid off by A. E. Maxwell as trustee for the Pensacola and Louisville Railroad Company, Messrs. Quilter, Ball & Co., and others:

Now, know ye, that for and in consideration of the premises and of the sum of seventy-six thousand nine hundred and sixteen dollars and fourteen cents, ($76,916\frac{14}{100}$,) the aggregate of the several sums above named, I have, and by these presents do bargain, sell, release, alien, and convey to the said A. E. Maxwell, trustee as aforesaid, the above particularly mentioned and described property, to have and to hold the same to him and to his heirs in trust as aforesaid.

In testimony whereof I have hereunto set my hand and affixed my seal this seventh day of August, A. D. 1872.

[SEAL.] E. McCONNIN,
Referee.

59 Signed, sealed, stamped, and delivered in presence of—
R. HERNANDEZ.
LOUIS P. KNOWLES.

STATE OF FLORIDA, *Escambia County:*

The execution of the foregoing deed was this day acknowledged before me by E. McConnin as his act & deed for the uses and purposes therein expressed.

Given under my hand and seal affixed this 16th day of June, A. D. 1873.

[SEAL.] R. A. STEARNS,
Clerk C't Court.

STATE OF FLORIDA, *Escambia County:*

Personally appeared before me Louis P. Knowles, who, being duly

sworn, says he is one of the subscribing witnesses to the foregoing deed, and that the same was executed in his presence.

LOUIS P. KNOWLES.

Subscribed & sworn to before me at Pensacola, in the county & State aforesaid, this 23d day of July, A. D. 1873.

In witness whereof I have hereunto set my hand & official seal.

[SEAL.] P K. YONGE,
N. P., Es. Co.

60 *Schedule A of lands purchased by A. E. Maxwell, as trustee of the Pensacola and Louisville Railroad Company, and others, and referred to in referee's deed of August 7th, 1872.*

Parts of sections.	Section.	Township.	Range.	Acres.		Price per acre.		Total.	
				Acres.	1/100	$	Cts.	$	Cts.
E. ½ E. ½ of N. W. ¼, N. W. ¼ of N. W. ¼, E. ½ of S. W. ¼	7	1 S.	31 W.	524	07	.....	10	52	40
W. ½, W. ½ of S. E. ¼	17	"	"	399	15	.....	10	39	91
W. ½ of N. E. ¼, E. ½ of N. W. ¼, N. ½ of S. E. ¼, N. E. ¼ of S. W. ¼	19	"	"	279	58	.....	10	27	95
Lot 1	13	2 S.	"	119	50	.....	35	41	82
" 2, S. E. lots 4, 5, & 6	17	"	"	228	00	.....	10	22	80
S. E. ¼ of S. W. ¼	25	"	"	40	16	.....	25	10	04
All of	1	1 S.	32 W.	639	04	.....	10	63	90
Lot 1	3	"	"	31	50	.....	10	3	15
N. E. ¼	11	"	"	160	71	.....	10	16	07
N. ½ of N. W. ¼	5	2 S.	"	79	93	.....	10	7	99
North of base line.									
W. ½ of N. W. ¼	7	5 N.	31 W.	80	09	.....	18	14	41
All of fractional	31	6 N.	"	492	62	.....	16	78	81
E. ½, W. ½ of N. W. ¼, W. ½ of S. W. ¼	3	3 N.	32 W.	480	00	.....	10	48	00
E. ½ & W. ½ of N. W. ¼	7	"	"	398	75	.....	10	39	87
W. ½ S. W. ¼, E. ½ of S E. ¼, N. W. ¼ of S. E. ¼	27	"	"	600	74	.....	27	162	19
S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, N. W. ¼ of S. E. ¼, W. ½ of S. W. ¼	29	"	"	529	18	.....	10	52	91
All of	3	4 N.	32 W.	642	50	.....	10	64	25
Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 15, & 16	5	"	"	509	58	.....	10	50	95
W. ½ of N. W. ¼, W. ½ of S. W. ¼	7	"	"	160	87	.....	10	16	08
S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, W. ½ of S. E. ¼	9	"	"	600	48	.....	10	60	04
All of fractional	15	"	"	457	30	.....	10	45	73
N. E. ¼ & E. ½ of S. E. ¼	17	"	"	240	18	.....	10	24	01
				7,693	93			943	28
61 Am'ts forward				7,693	93	.....	.....	943	28
N. W. ¼ & E. ½ of S. W. ¼	19	4 N.	32 W.	239	71	.....	10	23	97
All of frac.	21	"	"	477	14	.....	10	47	71
"	27	"	"	160	00	.....	10	16	00
N. E. ¼ of S. E. ¼, N. ½, W. ½ of S. E. ¼, & E. ½ of S. W. ¼	29	"	"	518	50	.....	10	51	85
W. ½ of N. E. ¼, W. ½ of S. E. ¼	31	"	"	480	00	.....	10	48	00
All of	33	"	"	642	50	.....	10	64	25
Do	1	5 N.	"	640	50	.....	10	64	05
Do	3	"	"	639	25	.....	10	63	92
Do	5	"	"	641	00	.....	10	64	10
N. ½ of lot 1, & lots 2, 3, 5, & 6	7	"	"	362	47	.....	10	36	24
W. ½ S. W. ¼, W. ½ of S. E. ¼	9	"	"	558	25	.....	20	111	65
W. ½ W. ½ of N. E. ¼	13	"	"	399	06	.....	10	39	90
All of	11	"	"	638	75	.....	10	63	87
Do	15	"	"	637	75	.....	10	63	77
Do	17	"	"	639	75	.....	10	63	97
E. ½, S. W. ¼, W. ½ of N. W. ¼	19	"	"	563	25	.....	10	56	32
E. ½ of N. E. ¼, W. ½, E. ½ of S. E. ¼	21	"	"	480	79	.....	10	48	07
All of	23	"	"	638	00	.....	38	242	44
N. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, W. ½ of S. E. ¼	27	"	"	598	79	.....	10	59	87
All of	29	"	"	639	00	.....	10	63	90
Do	31	"	"	274	93	.....	10	27	49
Do	33	"	"	639	00	.....	10	63	90
W. ½ of N. W. ¼, & W. ½ of S. W. ¼	35	"	"	159	50	.....	10	15	95
All of fractional	31	6 N.	"	409	40	.....	10	40	94
Lots 1, 2, 3, 4, W. ½ of S. E. ¼, S. W. ¼	35	"	"	405	28	.....	16	64	84

Parts of sections.	Section.	Township.	Range.	Acres.	Acres. 1/100	Price per acre. $	Price per acre. Cts.	Total. $	Total. Cts.
Lots 1, 2, 3, 4, S. E. ¼, & E. ½ of S. W. ¼	33	6 N.	32 W.	370	90	.....	10	37	09
E. ½, W. ½ of N. W. ¼, S. W. ¼ of S. W. ¼	1	2 N.	31 W.	427	63	.....	10	42	76
S. E ¼ of S. E. ¼	9	"	"	40	00	.....	34	13	60
Am'ts forward	.....	.....	.....	21, 015	03	.....	...	2, 543	70
62 Am'ts forward	.....	.....	.....	21, 015	03	.....	.....	2, 543	70
N. E. ¼, W. ½ of N. W. ¼, N. W. ¼ of S. E. ¼, W. ½ of S. W. ¼.	13	3 N.	33 W.	358	60	.....	34	121	92
N. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, W. ½, & N. W. ¼ of S. E. ¼.	25	"	"	480	29	.....	40	192	11
Lot 1	27	"	"	80	00	.....	10	8	00
Lots 1, 2, & 4	35	"	"	165	35	.....	10	16	53
All of	1	4 N.	33 W.	641	50	.....	52	333	58
E. ½, E. ½ of S. W. ¼, E. ½ of N. W. ¼	3	"	"	484	12	.....	52	251	74
N. E. ¼, E. ½ of S. E. ¼, N. W. ¼ of S. E. ¼ / N. E. ¼ of S. W. ¼, W. ½ of S. W. ¼	5	"	"	564	80	.....	55	310	64
S. E. ¼ of N. E. ¼, W. ½ of N. W. ¼, & E. ½ of S. E. ¼	9	"	"	199	76	.....	50	99	88
N. E. ¼ of S. W. ¼, W. ½ of S. W. ¼	9	"	"	119	85	.....	10	11	98
All of	11	"	"	640	75	.....	57	365	22
Do	13	"	"	641	00	.....	10	64	10
Do	15	"	"	639	00	.....	10	63	90
E. ½ of N. E. ¼, N. W. ¼, S. W. ¼ of S. E. ¼, & S. W. ¼	17	"	"	441	02	.....	10	44	10
All of	23	"	"	640	00	.....	10	64	00
N. E. ¼, E. ½ of N. W. ¼, S. W. ¼ of N. W. ¼ / S. E. ¼ of S. E. ¼, N. ½ of S. W. ¼	21	"	"	397	72	.....	10	39	77
All of	25	"	"	639	50	.....	10	63	95
Do	27	"	"	638	75	.....	10	63	87
Do	35	"	"	639	00	.....	62	396	18
N. E. ¼, N. W. ¼ of N. W. ¼, E. ½ of S. E. ¼	1	5"	"	280	11	.....	64	179	27
All of	9	"	"	639	50	.....	75	479	62
W. ½ of N. E. ¼, W. ½ of S. E. ¼	11	"	"	561	97	.....	30	168	59
Lots 2 & 3	13	"	"	159	79	.....	10	15	97
E. ½ of N. E. ¼, W. ½ of N. W. ¼, S. E. ¼, S. W. ¼ of S. W. ¼.	15	"	"	359	63	.....	10	35	96
All of	21	"	"	640	00	.....	10	64	00
Do	23	"	"	644	00	.....	10	64	40
E. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼ / W. ½ of N. W. ¼ & S. ½	25	"	"	559	12	.....	10	55	91
Am'ts forward	.....	.....	.....	33, 270	16	.....	....	6, 118	89
63 Amounts forward	.....	.....	.....	33, 270	16	.....	....	6, 118	89
N. E. ¼, S. W. ¼ of N. W. ¼, E. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, N. W. ¼ of S. W. ¼	27	5 N.	33 W.	360	56	00	10	36	05
All of	23	"	"	640	25	00	10	64	02
Do	35	"	"	641	00	00	10	64	10
All of frac	35	6 N.	"	360	66	00	10	36	06
	.....	.....	.....	35, 272	63	.....	....	6, 319	12

E. McCONNIN, *Referree.*

Schedule B of lands purchased by A. E. Maxwell, as trustee of the Pensacola and Louisville Railroad Company, and others, and referred to in referree's deed of Aug. 7th, 1872.

Parts of sections.	Section.	Township.	Range.	Acres.	Acres. 1/100	Price per acre. $	Price per acre. Cts.	Total. $	Total. Cts.
S. E. ¼ of S. W. ¼ & W. ½ of S. W. ¼	1	1 N.	29 W.	119	79	.....	08	9	58
E. ½ of S. W. ¼	9	"	"	79	87	.....	08	6	38
All of	15	"	"	641	00	.....	08	51	28
Lot 3	17	"	"	126	50	.....	30	37	95
Lots 1, 2, & 3	25	"	"	240	96	.....	25	60	24
" 1, 2, & 3	29	"	"	288	00	.....	08	23	04
All of	7	2 N.	29 W.	640	60	.....	10	64	06
All of	19	"	"	639	27	.....	10	63	92
All of	5	3 N.	"	640	48	.....	08	51	24
S. ½ & W. ½ of N. E. ¼	7	"	"	460	30	.....	08	32	02
All of	9	"	"	639	90	.....	08	51	19
W. ½ of S. W. ¼	11	"	"	79	93	.....	08	6	39
W. ½ & S. W. ¼	15	"	"	479	71	.....	08	38	38

Parts of sections.	Section.	Township.	Range.	Acres.		Price of acres.		Total.	
				Acre.	$\frac{1}{100}$	$	Cts.	$	Cts.
N. E. ¼ of S. E. ¼ & W. ½ of S. E. ¼	15	3 N.	29 W.	119	88	.....	08	9	58
S. W. ¼	17	"	"	160	20	.....	08	12	81
All of	19	"	"	639	60	.....	10	63	96
S. E. ¼ of N. W. ¼, W. ½ of N. W. ¼, S. W. ¼, & E. ½ of S. E. ¼	21	"	"	359	19	.....	10	35	91
E. ½ & S. W. ¼, E. ½ of N. W. ¼	23	"	"	561	64	.....	10	56	16
All of	31	"	"	639	04	.....	10	63	90
All of	3	4 N.	29 W.	642	22	.....	10	64	22
Do	5	"	"	644	04	.....	35	225	40
Do	7	"	"	642	40	.....	15	96	36
Do	9	"	"	640	79	.....	10	64	07
Amounts forward	.....	.....	.....	10, 065	27	.....	....	1, 188	04
64 Amounts forward	.....	.....	.....	10, 065	27	.....	....	1, 188	04
All of	15	4 N.	29 W.	639	20	.....	10	63	92
Do	17	"	"	639	04	.....	10	63	90
Do	19	"	"	641	53	.....	15	96	22
Do	21	"	"	638	22	.....	08	51	05
Do	27	"	"	641	20	.....	10	64	12
Do	29	"	"	643	04	.....	10	64	30
N. ½ of S. E. ¼	31	"	"	479	86	.....	10	47	98
W. ½ of N. W. ¼ & S. E. ¼ of S. W. ¼, W. ½ of S. W. ¼	33	"	"	199	95	.....	10	19	99
N. ½ of	35	"	"	320	00	.....	35	112	00
E. ½ of S. E. ¼	13	5 N.	"	79	88	.....	15	11	98
All of	15	"	"	640	48	.....	15	96	07
S. ½ of N. E. ¼ & S. E. ¼ & S. ½ of S. W. ¼	23	"	"	319	72	.....	10	31	97
N. ½ & S. E. ¼ & E. ½ of S. W. ¼	25	"	"	560	00	.....	15	84	00
E. ½ of N. E. ¼ & W. ½ of N. W. ¼, S. E. ¼ & W. ½ of S. W. ¼	27	"	"	399	70	.....	10	39	97
All of	29	"	"	639	60	.....	10	63	96
S. ½ of N. E. ¼, S. E. ¼, & S. ½ of S. W. ¼	31	"	"	319	08	.....	35	111	67
S. ½ of N. E. ¼	33	"	"	80	32	.....	35	28	11
S. E. ¼ & E. ½ of S. W. ¼	33	"	"	240	96	.....	10	24	09
All of	35	"	"	639	28	.....	15	95	89
Do	37	"	"	639	20	.....	15	95	88
E. ½ of	1	2 N.	30 W.	320	36	.....	10	32	07
E. ½ of N. E. ¼	13	"	"	80	25	.....	10	8	02
E. ½ of	25	"	"	320	20	.....	10	32	02
W. ½ of N. E. ¼, W. ½, & W. ½ of S. E. ¼	1	3 N.	"	480	38	.....	10	48	03
E. ½ & E. ½ of N. W. ¼ & E. ½ of S. W. ¼	11	"	"	479	41	.....	10	47	94
All of	13	"	"	639	00	.....	10	63	90
E. ½ of N. E. ¼ & E. ½ of S. E. ¼	25	"	"	159	56	.....	10	15	95
N. ½ & S. E. ¼ & E. ½ of S. W. ¼	27	"	"	559	12	.....	10	55	91
Amount forward	.....	.....	.....	22, 503	81	.....	....	2, 758	91
65 Am'ts forward	.....	.....	.....	22, 503	81	.....	....	2, 758	91
E. ½	41	3 N.	3 W.	320	00	.....	10	32	00
S. E. ¼	1	4 "	"	160	00	.....	10	16	00
All of	13	"	"	641	25	.....	10	64	12
Do	25	"	"	641	50	.....	10	64	15
S. E. ¼	23	"	"	160	75	.....	10	16	07
All of	37	"	"	641	50	.....	10	64	15
E. ½ of S. E. ¼	13	2 N.	"	80	25	.....	10	8	02
Lots 1, 2, 3, & 4	29	6 "	28 W.	235	00	.....	15	35	25
Entire	31	"	"	643	00	.....	25	160	75
Lots 1, 2, 3, 4, & 5, & W. ½ of lot 6	1	5 N.	29 W.	440	00	.....	10	44	00
Entire	5	"	"	638	88	.....	10	63	88
Lots 1, 2, & 3	9	"	"	406	27	.....	21	85	31
Entire	11	"	"	79	24	.....	10	7	92
N. ½ & S. W. ¼ & E. ½ of S. E. ¼	13	"	"	559	20	.....	10	55	92
Entire	17	"	"	370	00	.....	10	32	00
Do	19	"	"	641	00	.....	08	51	28
Do	21	"	"	651	74	.....	10	65	17
N. ½ of N. E. ¼, N. E. ¼ of N. W. ¼, S. ½ of N. W. ¼, N. ½ of S. W. ¼	23	"	"	279	75	.....	10	27	97
N. ½ of N. E. ¼, N. W. ¼ & N. ½ of S. W. ¼	31	"	"	319	07	.....	10	31	90
N. ½ of N. E. ¼, N. W. ¼ & W. ½ of S. W. ¼	33	"	"	321	28	.....	10	32	12
Lots 1, 2, 3, & 4	25	6 N.	"	214	00	.....	10	21	40
Lot 1	29	"	"	41	00	.....	10	4	10
Entire frac	37	"	"	292	12	.....	10	29	21
	.....	.....	.....	31, 230	61	.....	....	3, 772	60

E. McCONNIN, *Referee.*

Filed Jan'y 20th, 1875.

M. P. DE RIOBOO, *Clerk.*

(Endorsements:) E. McConnin, referree. To A. E. Maxwell, as trustee, &c. Received for record at 12 m. June 16, 1873. Recorded in book of deeds T, at pages 332, 3, 4, 5, 6. R. A. Stearns, recorder.

66 529. Recorded in Santa Rosa Co., Ju'y 24th, A. D. 1873, in book A, pages 720, 1, 2, 3, 4, 5. Frank Smith, cl'k c't court.

B.

This indenture, made the tenth day of December, in the year one thousand eight hundred and seventy-two, between Augustus E. Maxwell, of Pensacola, Florida, trustee, party of the first part, and the Pensacola and Louisville Railroad Company, a corporation created by and under the laws of the State of Florida, party of the second part, witnesseth:

That the said party of the first part, with the assent of the said Pensacola and Louisville Railroad Company, and of Messieurs Quilter, Ball & Co., the same being the only beneficiaries and persons for whom the party of the first part is trustee as aforesaid, and in consideration of the sum of one dollar to him in hand paid, and of other considerations, him and said Quilter, Ball & Co. moving, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to its successors and assigns forever, all the several pieces or parcels of land, being the roadway, stations, and depots of the Alabama and Florida Railroad, from the southern terminus thereof in the city of Pensacola to the northern terminus thereof in the State of Alabama, together with all and singular the stations, depots, buildings, engine-houses, road-bed,
67 superstructure, track, and other improvements and constructions thereon, and all the appurtenances necessary for the complete use of the said road; also, all the locomotives, cars, and other rolling-stock, together with all the rights, privileges, easements, and franchises of the said company, and the lands particularly described in schedule A, hereto annexed, lying in the county of Escambia, State of Florida; and also the lands particularly described in schedule B, hereto annexed, lying in Santa Rosa County, State of Florida, being the same premises that were conveyed to the party of the first part by E. McConnin, referree, by deed dated the seventh day of August, A. D. 1872, and recorded in the recorder's office of Escambia County, of the State of Florida, in book of deeds T, page 332, '3, '4, '5, '6, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal this tenth day of December, A. D. 1872.

A. E. MAXWELL,
Trustee.

Signed, sealed, and delivered in presence of—
C. C. YONGE.
H. H. KNOWLES.

STATE OF FLORIDA,
Escambia County:

68 I, A. E. Maxwell, do hereby acknowledge that I executed the foregoing instrument of writing as my free act and deed, for the uses and purposes therein mentioned.

A. E. MAXWELL,
Trustee.

Declared and acknowledged before me this 9th day of July, A. D. 1873.

[SEAL.] R. A. STEARNS,
Clerk of Circuit Court.

STATE OF FLORIDA,
County of Escambia:

Personally appeared before me C. C. Yonge, who, being duly sworn, says that he is one of the subscribing witnesses to the foregoing deed, and that the same was executed in his presence.

C. C. YONGE.

Subscribed & sworn to before me this 23d day of July, A. D. 1873, at Pensacola, in the county & State aforesaid. In witness whereof I have hereunto set my hand & official seal.

[SEAL.] P. K. YONGE,
N. P. Es. Co.

69 *Schedule A of lands purchased by A. E. Maxwell, as trustee of the Pensacola and Louisville Railroad Company and others, and referred to in referree's deed of August 7th, 1872.*

Parts of section.	Section.	Township.	Range.	Acres.	Acres.	Price per acre. $	Cts.	Total. $	Cts.
E. ½, E. ¼ of N. W. ¼, N. W. ¼ of N. W. ¼, E. ½ of S. W. ¼	7	1 S.	31 W.	524	07		10	52	40
W. ½, W. ½ of S. E. ¼	17	"	"	399	15		10	39	91
W. ½ of N. E. ¼, E. ½ of N. W. ¼, W. ½ of S. E. ¼, N. E. ¼ of S. W. ¼	19	"	"	279	58		10	27	95
Lot 1	13	2 S.	"	119	50		35	41	82
" 2, S. ½ lots 4, 5, & 6	17	"	"	228	00		10	22	80
S. E. ¼ of S. W. ¼	25	"	"	40	16		25	10	04
All of	1	1 S.	32 W.	639	04		10	63	90
Lot 1	3	"	"	31	50		10	3	15
N. E. ¼	11	"	"	160	71		10	16	07
N. ½ of N. W. ¼	5	2 S.	"	79	93		10	7	99
North of base line.									
W. ½ of N. W. ¼	7	5 N.	31 W.	80	09		18	14	41
All of fractional	31	6 "	"	492	62		16	78	81
E. ½, W. ½ of N. W. ¼, W. ½ of S. W. ¼	3	3 N.	32 W.	480	00		10	48	00
E. ½ & W. ½ of N. W. ¼	7	"	"	398	75		10	39	87
N. ½, S. W. ¼, E. ½ of S. E. ¼, N. W. ¼ of S. E. ¼	27	"	"	600	74		27	162	19
S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, N. W. ¼, S. E. ¼, W. ½ of S. W. ¼	29			529	18		10	52	91
All of	3	4 N.	32 W.	642	50		10	64	25
Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 15, & 16	5	"	"	509	58		10	50	95
W. ½ of N. W. ¼, W. ½ of S. W. ¼	7	"	"	160	87		10	16	08
S. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, W. ½ of S. E. ¼	9	"	"	600	48		10	60	04
All of fractional	15	"	"	457	30		10	45	73
Amounts forward				7,453	75			919	27
70 Amount bro't over				7,453	75			919	27
N. E. ¼ & E. ½ of S. E. ¼	17	4 N.	32 W.	240	18		10	24	01
N. W. ¼ & E. ½ of S. W. ¼	19	"	"	239	71		10	23	97
All of fractional	21	"	"	477	14		10	47	71
"	27	"	"	160	00		10	16	00
N. ½, N. E. ¼ of S. E. ¼, W. ½ of S. E. ¼, & E. ½ of S. W. ¼	29	"	"	518	50		10	51	85

Parts of section.	Section.	Township.	Range.	Acres.		Price per acre.		Total.	
				Acres.	1/100	$	Cts.	$	Cts.
W. ½ of N. E. ¼, W. ½, W. ½ of S. E. ¼	31	4 N.	32 W.	480	00	.....	10	48	00
All of	33	"	"	642	50	.....	10	64	25
Do	1	5 N.	"	640	50	.....	10	64	05
"	3	"	"	639	25	.....	10	63	92
"	5	"	"	641	00	.....	10	64	10
N. ½ of lot 1, & lots 2, 3, & 6	7	"	"	362	47	.....	10	36	24
W. ½, S. W. ¼, W. ½ of S. E. ¼	9	"	"	558	25	.....	20	111	65
W. ½, W. ½ of N. E. ¼	13	"	"	399	06	.....	10	39	90
All of	11	"	"	638	75	.....	10	63	87
Do	15	"	"	637	75	.....	10	63	77
Do	17	"	"	639	75	.....	10	63	97
E. ½, S. W. ¼, W. ½ of N. W. ¼	19	"	"	563	25	.....	10	56	32
E. ½ of N. E. ¼, W. ½, E. ½ of S. E. ¼	21	"	"	480	79	.....	10	48	07
All of	23	"	"	638	00	.....	38	242	44
N. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, W. ½	27	"	"	598	79	.....	10	59	87
All of	29	"	"	639	00	.....	10	63	90
Do	31	"	"	274	93	.....	10	27	49
Do	33	"	"	639	00	.....	10	63	90
W. ½ of N. W. ¼, & W. ½ of S. W. ¼	35	"	"	159	50	.....	10	15	95
All of fractional	31	6 N.	"	409	40	.....	10	40	94
Lots 1, 2, 3, 4, W. ½ of S. E. ¼, S. W. ¼	35	"	"	405	28	.....	16	64	84
Lots 1, 2, 3, 4, S. E. ¼, & E. ½ of S. W. ¼	33	"	"	370	90	.....	10	37	09
E. ½, W. ½ of N. W. ¼, S. W. ¼ of S. W. ¼	1	3 N.	33	427	63	.....	10	42	76
Amounts forward	.....	.....	.....	20, 975	03	.....	.....	2, 530	10
71 Amount forward	.....	.....	.....	20, 975	03	.....	.....	2, 530	10
S. E. ¼ of S. E. ¼	9	3 N.	33 W.	40	00	.....	34	13	60
N. E. ¼, W. ½ of N. W. ¼, N. W. ¼ of S. E. ¼, W. ½ of S. W. ¼	13	"	"	358	60	.....	34	121	92
N. E. ¼ of N. E. ¼, W. ½ of N. E. ¼, W. ½ & N. W. ¼ of S. E. ¼	25	"	"	480	29	.....	40	192	11
Lot 1	27	"	"	80	00	.....	10	8	00
Lots 1, 2, & 4	35	"	"	165	35	.....	10	16	53
All of	1	4 N.	33 W.	641	50	.....	52	333	58
E. ½, E. ½ of S. W. ¼, E. ½ of N. W. ¼	3	"	"	484	12	.....	52	251	74
W. ½, E. ½ of S. E. ¼, N. W. ¼ of S. E. ¼, N. E. ¼ of S. W. ¼, W. ½ of S. W. ¼	5	"	"	564	80	.....	55	310	64
S. E. ¼ of N. E. ¼, W. ½ of N. W. ¼, & E. ½ of S. E. ¼	9	"	"	199	76	.....	50	99	88
N. E. ¼ of S. W. ¼, W. ½ of S. W. ¼	9	"	"	119	85	.....	10	11	98
All of	11	"	"	640	75	.....	57	365	22
Do	13	"	"	641	00	.....	10	64	10
Do	15	"	"	639	00	.....	10	63	90
E. ½ of N. E. ¼, N. W. ¼, S. W. ¼ of S. E. ¼, & S. W. ¼	17	"	"	441	02	.....	10	44	10
All of	23	"	"	640	00	.....	10	64	00
N. E. ¼, E. ½ of N. W. ¼, S. W. ¼ of N. W. ¼, S. E. ¼ of S. E. ¼, N. ½ of S. W. ¼	21	"	"	397	72	.....	10	39	77
All of	25	"	"	639	50	.....	10	63	95
Do	27	"	"	638	75	.....	10	63	87
Do	35	"	"	639	00	.....	62	396	18
N. E. ¼, N. W. ¼ of N. W. ¼, E. ½ of S. E. ¼	1	5 N.	"	280	11	.....	64	179	27
All of	9	"	"	639	50	.....	75	479	62
W. ½ of N. E. ¼, W. ½ of S. E. ¼	11	"	"	561	97	.....	30	168	59
Lots 2 & 3	13	"	"	159	79	.....	10	15	97
E. ½ of N. E. ¼, W. ½ of N. W. ¼, S. E. ¼, S. W. ¼ of S. W. ¼	15	"	"	359	63	.....	10	35	96
All of	21	"	"	640	00	.....	10	64	00
Do	23	"	"	644	00	.....	10	64	40
E. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼, W. ½ of N. W. ¼, & S. ½	25	"	"	559	12	.....	10	55	91
Amounts forward	.....	.....	.....	33, 270	16	.....	.....	6, 118	89
72 Amount forward	.....	.....	.....	33, 270	16	.....	.....	.....	.....
N. E. ¼, S. W. ¼ of N. W. ¼, E. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, N. W. ¼ of S. W. ¼	27	5 N.	33 W.	360	56	.....	10	36	05
All of	23	"	"	640	25	.....	10	64	02
Do	35	"	"	641	00	.....	10	64	10
All of frac	35	6 N.	"	360	66	.....	10	36	06
	.....	.....	.....	35, 273	63	.....	.....	6, 319	12

E. McCONNIN, *Referee*

Schedule B of land purchased by A. E. Maxwell, as trustee of the Pensacola and Louisville Railroad Company and others, and referred to a referree's deed Aug. 7, 1872.

Parts of sections.	Section.	Township.	Range.	Acres.		Price per acre.		Total.	
				Acres.	1/100	$	Cts.	$	Cts.
S. E. ¼ of S. W. ¼ & W. ½ of S. W. ¼	1	1 N.	29 W.	119	79	.....	08	9	58
E. ½ of S. W. ¼	9	"	"	79	87	.....	08	6	38
All of	15	"	"	641	00	.....	08	51	28
Lot 3	17	"	"	126	50	.....	30	37	95
Lots 1, 2, & 3	25	"	"	240	96	.....	25	60	24
" 1, 2, & 3	29	"	"	288	00	.....	08	23	04
All of	7	2 N.	29 W.	640	60	.....	10	64	06
All of	19	"	"	639	27	.....	10	63	92
All of	5	3 N.	"	640	48	.....	08	51	24
S. ½ & W. ½ of N. E. ¼	7	"	"	400	30	.....	08	32	02
All of	9	"	"	639	90	.....	08	51	19
W. ½ of S. W. ¼	11	"	"	79	93	.....	08	6	39
N. ½ of S. W. ¼	15	"	"	479	71	.....	08	38	38
N. E. ¼ of S. E. ¼ & W. ½ of S. E. ¼	"	"	"	119	88	.....	08	9	58
S. W. ¼	17	"	"	160	20	.....	08	12	81
All of	19	"	"	639	60	.....	10	63	96
Amounts forward	.....	.....	.....	5,935	99	.....	.....	582	02
73 Amounts forward	.....	.....	.....	5,935	99	.....	.....	582	02
S. E. ¼ of N. W. ¼, W. ½ of N. W. ¼, S. W. ¼, & E. ½ of S. E. ¼	21	3 N.	29 W.	359	19	.....	10	35	91
E. ½ of S. W. ¼, E. ½ of N. W. ¼	23	"	"	561	64	.....	10	56	16
All of	31	"	"	639	04	.....	10	63	90
Do	3	4 N.	29 W.	642	22	.....	10	64	22
Do	5	"	"	644	00	.....	35	225	40
Do	7	"	"	642	40	.....	15	96	36
Do	9	"	"	640	79	.....	10	64	07
Do	15	"	"	639	20	.....	10	63	92
Do	17	"	"	639	04	.....	10	63	90
Do	19	"	"	641	53	.....	15	96	22
Do	21	"	"	638	22	.....	08	51	05
Do	27	"	"	641	20	.....	10	64	12
Do	29	"	"	643	04	.....	10	64	30
N. ½ of S. E. ¼	31	"	"	479	86	.....	10	47	98
W. ½ of N. W. ¼, S. E. ¼ of S. W. ¼, W. ½ of S. W. ¼	33	"	"	199	95	.....	10	19	99
W. ½ of	35	"	"	320	00	.....	35	112	00
E. ½ of S. E. ¼	13	5 N.	"	79	88	.....	15	11	98
All of	15	"	"	640	48	.....	15	96	07
S. ½ of N. E. ¼, & S. E. ¼, & S. ½ of S. W. ¼	23	"	"	319	72	.....	10	31	97
N. ¼, & S. E. ¼, & E. ½ of S. W. ¼	25	"	"	560	00	.....	15	84	00
E. ½ of N. E. ¼, & W. ½ of N. W. ¼, S. E. ¼, & W. ½ of S. W. ¼	27	"	"	399	70	.....	10	39	97
All of	29	"	"	639	60	.....	10	63	96
S. ½ of N. E. ¼, S. E. ¼, & S. ½ of S. W. ¼	31	"	"	319	08	.....	35	111	67
S. ½ of N. E. ¼	33	"	"	80	32	.....	35	28	11
S. E. ¼, & E. ½ of S. W. ¼	33	5 N.	29 W.	240	96	.....	10	24	09
All of	25	"	"	639	28	.....	15	95	89
Do	37	"	"	639	20	.....	15	95	88
E. ½ of	1	2 "	30 "	320	36	.....	10	32	03
	.....	.....	.....	19,785	89	.....	.....	2,487	14
74 Amounts forward	.....	.....	.....	19,785	89	.....	.....	2,487	14
E. ½ of N. E. ¼	13	2 N.	30 W.	80	25	.....	10	8	02
E. ½ of	25	"	"	320	20	.....	10	32	02
W. ½ of N. E. ¼, W. ½, & W. ½ of S. E. ¼	1	3 N.	"	480	38	.....	10	48	03
E. ½, & E. ½ of N. W. ¼, & E. ½ of S. W. ¼	11	"	"	479	41	.....	10	47	94
All of	13	"	"	639	00	.....	10	63	90
E. ½ of N. E. ¼, & E. ½ of S. E. ¼	25	"	"	159	56	.....	10	15	95
N. ½, & S. E. ¼, & E. ½ of S. W. ¼	27	"	"	559	12	.....	10	55	91
E. ½	41	"	"	320	00	.....	10	32	00
S. E. ¼	1	4 N.	"	160	00	.....	10	16	00
All of	13	"	"	641	25	.....	10	64	12
Do	25	"	"	641	50	.....	10	64	15
S. E. ¼	23	"	"	160	75	.....	10	16	07
All of	37	"	"	641	50	.....	10	64	15
E. ½ of S. E. ¼	13	2 N.	"	80	25	.....	10	8	02
Lots 1, 2, 3, & 4	29	6 "	28 W.	235	00	.....	15	35	25
Entire	31	"	"	643	00	.....	25	160	75
Lots 1, 2, 3, 4, & 5, & W. ½ of lot 6	1	5 N.	29 W.	440	00	.....	10	44	00
Entire	5	"	"	638	88	.....	10	63	88
Lots 1, 2, & 3	9	"	"	406	27	.....	21	85	31
Entire	11	"	"	79	24	.....	10	7	92

Parts of sections.	Section.	Township.	Range.	Acres.		Price per acre.		Total.	
				Acres.	1/100	$	Cts.	$	Cts.
N. ½, & S. W. ¼, & E. ½ of S. E. ¼	13	5 N.	29 W.	559	20	.....	10	55	92
Entire	17	"	"	320	00	.....	10	32	00
Do	19	"	"	641	00	.....	08	51	28
Do	21	"	"	651	74	.....	10	65	17
N. ½, & N. E. ¼, N. E. ¼ of N. W. ¼, S. ½ of N. W. ¼, W. ½ of S. W. ¼	23	"	"	279	75	.....	10	27	97
N. ½ of N. E. ¼, N. W. ¼, & N. ½ of S. W. ¼	31	"	"	319	07	.....	10	31	90
N. ½ of N. E. ¼, N. W. ¼, & W. ½ of S. W. ¼	33	"	"	321	28	.....	10	32	12
	.....	.....	.....	30,683	49	.....	....	3,716	89
Amount forward	.....	.....	.....	30,683	49	.....	....	3,716	89
Lots 1, 2, 3, & 4	25	6 N.	29 W.	214	00	.....	10	21	40
Lot 1	29	"	"	41	00	.....	10	4	10
Entire frac	37	"	"	292	12	.....	10	29	21
				31,230	61	.....	....	3,772	60

E. McCONNIN, *Referee.*

75 OFFICE CLERK C'T COURT,
Pensacola, July 9th, 1873.

The above deed recorded this July 9th, 1873, in book T of deeds, at pages 364, 5, 6, 7, 8.

R. A. STEARNS,
Clerk C't Court.

530. The above deed recorded July 24, 1873, in book A, pages 725, 6, 7, 8, 9, & 730.

FRANK SMITH,
C'k Circuit Court, Santa Rosa County, State of Florida.

Filed Jan'y 20, 1875.

M. P. DE RIOBOO, *Clerk.*

C.

This indenture, made the twenty-sixth day of June, in the year one thousand eight hundred and seventy-four, by and between the Pensacola and Louisville Railroad Company, a corporation duly organized and existing under the laws of the State of Florida and of the State of Alabama, (hereinafter called the railroad company,) party of the first part, and the Western Union Telegraph Company, (hereinafter called the telegraph company,) party of the second part:

The railroad company, in consideration of the agreements and covenants herein contained, on the part of the telegraph company to be kept and performed, and of other valuable considerations, by these presents grants, bargains, sells, releases, and conveys to the telegraph company, its successors and assigns, the sole and exclusive privilege and right to erect, construct, maintain, use, and operate such and so many lines of telegraph, and the poles, wires, positives, and appurtenances therefor, as the telegraph company may, subject to the proviso
76 next hereinafter expressed, from time to time see fit, upon, along, over, and across the line of railroad and its appurtenances of the railroad company now constructed or hereafter to be acquired or constructed, which line, at present, extends from Pensacola Bay, in the

State of Florida, to Pensacola Junction, in the State of Alabama, and upon, along, over, and across each and every part of such present and future line of railroad and its appurtenances, and each and every part of the lands, tenements and hereditaments, bridges, and structures, on or over which such present or future line of railroad, or any part thereof, is now or may hereafter be located or constructed, or which are now or may hereafter be owned, leased, or occupied for any purpose by the railroad company.

To have and to hold the premises to the use of the telegraph company, its successors and assigns, forever: provided always, that such line or lines of telegraph and appurtenances shall be constructed and maintained in such manner and at such distance from the track of said railroad as shall be indicated or assented to by the engineer or president of the railroad company in good faith, with the view of preventing interference with the practical operation of said railroad.

And this indenture further witnesseth, that the railroad company, for the considerations aforesaid, also grants, bargains, sells, assigns, and conveys to the telegraph company, its successors and assigns, all and singular the property appertaining to each and every of the lines of telegraph which are authorized to be constructed, maintained, and operated by an act of the legislature of the State of Florida approved on or about February first, eighteen hundred and seventy-four, entitled "An act to amend an act to authorize the Pensacola and Louisville Railroad Company to construct, own, and operate a telegraph-line upon their right of way, approved February fourteenth, eighteen hun-
77 dred and seventy-three," and all and singular the rights, privileges, and franchises conferred by said act approved February first, eighteen hundred and seventy-four, with full power to construct, own, and operate all and singular the telegraph-lines in said amendatory act mentioned, and enjoy all the rights, privileges, and franchises conferred by the said act of the legislature approved February first, eighteen hundred and seventy-four.

To have and to hold the same to the use of the said telegraph company, its successors, and assigns, forever.

Provided always, that such line or lines of telegraph and appurtenances shall be constructed and maintained in such manner and at such distance from the track of said railroad as shall be indicated or assented to by the engineer or president of the railroad company in good faith, with a view of preventing interference with the practical operations of said railroad. And the said companies further agree with each other as follows:

First. The telegraph company covenants and agrees with the railroad company that it will, within thirty days from the twenty-sixth day of June, eighteen hundred and seventy-four, commence the construction of a line of telegraph along the said railroad, extending as aforesaid, and will proceed to complete the erection and construction thereof between said Pensacola Bay and said Pensacola Junction with reasonable diligence.

Second. The railroad company agrees to furnish all labor, excepting a foreman, for the construction of said line of telegraph from Pensacola Bay to Pensacola Junction aforesaid, and all labor for its maintainance and repair, and for the removal and re-erection of the poles and other structures when the same may be necessary on account of any
78 change in the location of the track or tracks, switches, or turn-outs.

Third. The railroad company also agrees to transport, free of charge, over its said railroad all persons in the employ of the telegraph

company, when travelling on the telegraph company's business, and all material for the construction, maintenance, and repair of the said telegraph-line on said railroad, and of the offices thereon.

Fourth. The telegraph company agrees to furnish instruments and batteries for the operation of said line, and to open and maintain and operate offices at Pensacola, and such other points as it may deem fit, and said railroad company will furnish office-room in its depot building or buildings at such points as the telegraph company may desire to open and maintain offices, free of rent.

Fifth. Said railroad company may open and maintain such additional offices as it shall require, not exceeding four in number, which shall be maintained and operated at the expense of said railroad company, (except instruments and battery, to be furnished by the telegraph company,) and said offices shall be under the direction of the superintendent of said telegraph company; at all such telegraph-stations of said railroad company, its employees shall receive, transmit, and deliver such commercial or paid messages as may be offered, at the tariff-rates of the said telegraph company, and shall render monthly statements of such business and full accounts of all receipts therefrom, and shall pay such receipts to said telegraph company, in such manner as the telegraph company may direct.

Sixth. Said railroad company shall not grant any right of way for construction or use of telegraph-lines to any other person or corporation, nor carry men and material therefor, except at regular rates
79 of freight and fare, nor will it furnish facilities or assistance that it may lawfully withhold for such competing lines, nor stop its trains, nor distribute material therefor at other than regular stations.

Seventh. So long as there shall be but one wire on said line, messages of the railroad company respecting the movements of trains shall have precedence; but the telegraph company shall, at its discretion, add one or more additional wires, as the public service shall, in the judgment of the telegraph company, require; and when one or more wires shall have been added, the original wire shall be set apart for the preferential use of the railroad company.

Eighth. All messages of the officers and agents of said railroad company pertaining to its railroad business, as well as their family and social messages, shall be transmitted free of charge between all stations on the present line of said railroad; and said telegraph company will further transmit, free of charge, messages on the business of said railroad company, beyond the limits above named, to an amount not exceeding one hundred dollars per month, at the regular rates of said telegraph company. For messages in excess of such amount in any one month the telegraph company will charge, and the railroad company will pay, one-half the regular tariff-rates, settlements to be made monthly. The transmission of messages to points off the present line of the road to be authorized by franks, which will be issued by the telegraph company on the application of the president or general superintendent of the railroad company: Provided, That if the telegraph company shall purchase or acquire the existing line of telegraph on such road, such purchase may supercede and suspend the erection of a new line,
80 and such purchased line shall be owned by the telegraph company; but in other respects it shall be held and treated under this contract as if the same had been constructed as herein provided; and the railroad company shall furnish the transportation and labor for its thorough reconstruction or repairs.

Ninth. It is further understood and agreed that in the event of an

extension of the line of said railroad that the benefits, privileges, and advantages conceded to the railroad company by the telegraph company shall be increased in the proportion of the extension of said railroad; and the railroad company agrees to perform upon its part, upon and in reference to said extension of the telegraph-line on the railroad, all the obligations it has assumed to said telegraph company, in and in respect to the present line of said railroad.

Tenth. This contract shall bind and be operative in favor of the successors and assigns of the respective parties hereto; and in case of any disagreement concerning the true intent and meaning of its provisions, the subject of such difference shall be referred to three arbitrators, one chosen by each party and the third by the two others chosen, and the decision of such arbitrators, or of a majority thereof, shall be final and conclusive.

In witness whereof the said parties hereto have caused their respective corporate seals to be hereunto affixed, and their respective corporate names to be hereunto subscribed by their respective presidents, and attested by their respective secretaries the day and year first above written.

THE WESTERN UNION TELEGRAPH CO.,
[SEAL W. U. T. CO.] By WILL'M ORTON,
President.

Sealed and delivered in the presence of—
GEO. H. MUMFORD,
Secretary.

81 PENSACOLA AND LOUISVILLE R. R. CO.,
ALBERT HYER,
President.
[SEAL.] T. E. JORDAN,
Secretary.

Witnesses to the execution by the Pensacola and Louisville R. R'd Company—
LOUIS P. KNOWLES.
H. F. INGRAHAM.

STATE OF FLORIDA,
Escambia County:

Personally appeared before me, Philip K. Yonge, a notary public in and for said county, H. F. Ingraham, who makes oath that he was a witness present at the signing and execution of the foregoing indenture on the part of the Pensacola and Louisville Railroad Company, and that the same was signed and executed by the president and secretary of said company, with the seal of said company then and there affixed, in the presence of Louis P. Knowles and himself, and that they, in each other's presence, then and there subscribed their names as witnesses thereto.

In witness whereof I hereunto set my hand and seal of office this 26th day of June, 1874, the said Ingraham also subscribing his name thereto.

H. F. INGRAHAM.

Subscribed and sworn to before me this 26th day of June, 1874.
[SEAL.] PHILIP K. YONGE,
Notary Public.

Filed Jan'y 20, 1875.

M. P. DE RIOBOO, *Clerk.*

82 Depositions of witnesses produced and examined on the 2d & 3d days of February, A. D. 1875, at the city of Pensacola, in the State of Florida, by virtue of the annexed commission issued out of the clerk's office of the circuit court of the United States for the fifth judicial circuit for the northern district of Florida, to us directed, for the examination of the said witnesses in a cause there depending between the Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendant.

On the part of the defendant, Peter Knowles, Albert Hyer, William K. Hyer, L. P. Knowles, Henry H. Knowles, H. Baars, C. C. Yonge, W. C. Cooke, T. E. Jordan, and W'm F. Lee, of Pensacola, being duly sworn, deposeth and answereth as follows, viz:

Depositions of Peter Knowles.

Peter Knowles, being duly sworn, to the first interrogatory saith that it was constructed about '58; he knows it was in operation in '59; it was constructed by a stock co.; don't know name of company, nor whether it was chartered.

To the second int'y he answers & saith that it was continuously operated from time of its erection until the evacuation of Pensacola, about May of 1862, when suspension occurred, lasting through the war till about '66, when operation was resumed, which has continued up to the present time. Cause of the suspension, the war between the States; don't know whether it has been a profitable one, but has been so informed by the operator, Thornton.

To the third int'y he answers & saith that it extends now about a mile into Alabama, to the junction of the P. & L. R. R.; formerly extended to Pollard, a distance of about six miles into Alabama.

83 To the fourth int'y he answers & saith that it has enjoyed a monopoly from its erection to the time of the erection of the Western Union Telegraph line in 1874.

To the fifth he answers & saith that it has operated injuriously by preventing other telegraph companies extending their lines to this place, and thus preventing reduction of charges.

To the sixth int'y he an's & saith that rate of charges has been greatly in excess of other neighboring lines; that while in Mobile in March, '74, he sent three dispatches, ten words each, one to New Orleans, one to Montgomery, & one to Pensacola; ones to New Orleans & Montgomery 30 cents each, the one to Pensacola $1.35. Rate of W. U. T. Co. for ten words, from Pensacola to Pollard, is 30 cents, Pensacola to Junction the same. Don't know rate to Mobile, New Orleans, or New York.

To the seventh int'y he answers & saith that he cannot answer the question definitely.

To the eighth he answers & saith that the construction of telegraph-lines in the section of country through which the P. T. lines extends costs less than construction of telegraph-lines usually costs, from abundance of material near at hand; don't know costs per mile approximately.

To the ninth int'y he answers & saith that it is a post-route, & has been since its construction.

PETER KNOWLES.

Sworn to & subscribed before us this 2d February, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

Deposition of Albert Hyer.

Albert Hyer, being duly sworn, answers & saith to the first int'y, that he is an officer of the P. & L. R. R. Co.; that he is president of said company, & that he has been connected with company about four
84 years, holding during that time certain offices, viz, the office of vice-president for about two years, and office of president about one year, during the whole four years being closely connected with the management and business affairs of said road.

To the second int'y he answers & saith that it has not.

To the last int'y he answers & saith that he knows nothing further.

ALBERT HYER.

Sworn to & subscribed to before us this 2nd February, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

To the first cross-int'y Albert Hyer, being duly sworn, saith that there has been none other until construction of the Western Union Telegraph line in 1874.

To the second cross-int'y he answers & saith that it does, with exception of a few miles, viz, from point where the line of Pensacola & Louisville R. R. diverges from former line of the Alabama & Florida R. R., a few miles south of the Alabama State line, that it has been so since '66, with exception above given.

To the third cross-int'y he answers & saith that he does not know.

To the fourth cross-int'y he answers & saith that it has.

To the fifth cross-int'y he answers & saith that it did, by reciprocal right of free use between said railroad & said Pensacola Telegraph Company; that this free use continued till February, 1873, when it was interrupted by action of the P. T. Co., as shown by communication hereto attached, marked "Exhibit A."

To the sixth cross-int'y he answers & saith that he does not know that it has ever objected, until the contract between the P. & L. R. R. Co. and the defendant was made in 1874, when the P. & L. R. R. Co.
85 parted with its right to permit any other telegraph company to use its right of way.

To the seventh cross-int'y he answers and saith that *that* it has to all of these points, the one to Milton about two years ago, to the navy-yard about one year ago, & the one to Milview about three or four months ago.

To the eighth cross-int'y he answers & saith that he thinks it has.

To the ninth cross-int'y he answers & saith that he meant to say that there was no written grant or assignment.

To the tenth cross-int'y he answers & saith that he has answered this in the above answer.

ALBERT HYER.

Sworn to & subscribed before us this 2nd Feb'y, A. D. 1875.

P. K. YONGE,
W. A. BLOUNT,
Commissioners.

Deposition of T. E. Jordan.

T. F. Jordan, being duly sworn, answers & says to the first int'y that he is secretary; that he has been connected with said company

about six years, viz, as ass't secretary about five years, and as secretary about one year.

To the second int'y he answers & saith that there has been no written grant or assignment that he knows of.

To the last int'y he answers & saith that he knows nothing further.

T. E. JORDAN.

Sworn to & subscribed before us this 2d Feb'y, A. D. 1875.

P. K. YONGE,
W. A. BLOUNT,
Commissioners.

To the first cross-int'y, T. E. Jordan, being duly sworn, answers and says that there has been none until construction of Western Union Telegraph line in 1874, that he knows of.

86 To the second cross-int'y he answers & saith that it does, with exception of a few miles, viz, the few miles from point where line of Pensacola & Louisville R. R. diverges from former line of the Alabama & Florida R. R., a few miles south of the Alabama State line; that it has been so since '66, with exception above given.

To the third cross int'y he answers & saith that he knows nothing about it.

To the fourth cross-int'y he answers & saith that it has, except a few miles at northern end, to the best of his recollection.

To the fifth cross-int. he answers and says that it did by exchange of courtesy of free use until February, 1873, & thereafter by payment of usual rates.

To the sixth cross-int'y he answers & says that he does not know of its ever making any objection.

To the seventh cross-int'y he answers & says that it has, between Pensacola & Milview, Milton & the navy-yard; that he does not know dates, but all have been erected in the last two or three years.

To the eighth cross-int'y he ans. & says that it has.

To the ninth cross-int'y he answers & says that he means that there was no written grant or assignment, that he knows of.

To the tenth cross-int'y he answers and says that he has answered this in the above answer.

T. E. JORDAN.

Sworn to & subscribed before us this 2nd February, A. D. 1875.

P. K. YONGE,
W. A. BLOUNT,
Commissioner'.

Deposition of C. C. Yonge.

C. C. Yonge, who, being duly sworn, answers and says to the
87 first int'y that he is a subscribing witness to said deed, and that the same was executed in his presence.

C. C. YONGE.

Sworn to & subcribed before us this 2nd February, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

Deposition of W. C. Cooke.

W. C. Cooke, being duly sworn, deposeth and saith in answer to first int'y that he don't know.

To the second int'y he answereth & saith that he don't know.

To the third int'y he answers & says that said line extends into a portion of Escambia County, Ala.; does not know how far.

To the fourth int'y he answers & saith that since he has known said line, viz, from time it was rebuilt after the war, it has enjoyed a monopoly until extension of Western Union Telegraph line to Pensacola about four months since.

To the fifth int'y he answers & says that the monopoly has operated injuriously to Pensacola; that line, as a line, has been a benefit to Pensacola and vicinity.

To the sixth int'y he answers and says that it is greatly in excess of other lines, being three & a third times more than other lines: Rate of Western Union line from Pensacola to Pollard is 30c. p'r 10 words; from Pensacola to Junction is 30c. per 10 words; from Pensacola to Mobile is 60c. p'r 10 words; from Pensacola to New Orleans is 75c. p'r 10 words; from Pensacola to New York is $1.75 per 10 words.

To seventh int'y he answers & says that, as near as he can judge, the community has been compelled to pay plaintiff four times as much for telegraphing as they have paid to neighboring lines.

To eighth int'y he answers & says that it is not; that he cannot state cost per mile approximately.

88 To ninth int'y he answers & says that it is a post-route of the U. S., but he cannot say how long it has been one.

To the last int'y he answers & says that he knows nothing further.

W'M C. COOKE.

Sworn to and subscribed before us this 3d day of February, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

To the first cross-int'y W. C. Cooke, being sworn, answers and says that there has not been any other, that he is aware of, until construction of the Western Union Telegraph line.

To the 2nd cross-int'y he answers & says that he thinks it does, and that he thinks it has since 1866.

To the third cross-int'y he answers & says that he does not know.

To the fourth cross-int'y he answers & says that he thinks it has.

To the fifth cross-int'y he answers & says that he don't know.

To the sixth cross-int'y he answers & says that he don't know anything about it.

To the seventh cross-int'y he answers & says that it has to all of these points; don't know when they were constructed.

To the eighth cross-int'y he answers & says that he thinks it has.

W'M C. COOKE.

Sworn to & subscribed before us this 3rd day of Feb'y, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

Deposition of W'm F. Lee.

W'm F. Lee, being duly sworn, deposeth and saith, in answer to the first int'y, that his profession & occupation is civil engineering;

89 his age is 43 years.

To the second int'y he answers & says that Ala. & Fl'a R. R. extended from Pensacola, in direction little east of north on west side of Escambia River, to the State line of Alabama, in the direction

of Pollard. Line of Pensacola & Louisville R. R. is the same as Ala. & Fl'a R. R. from Pensacola to the 41st mile-post, then deflects to the westward, striking the State line at a point in direction of present Pensacola Junction, and about six hundred feet from it, said junction being west of Escambia Creek, and about five miles from Pollard in the direction of Mobile.

To the third int'y he answers and says that the Pensacola Telegraph line extends from Pensacola along the right of way of the Ala. & Fl'a R. R. to the neighborhood of the 43rd mile-post, and then it leaves the right of way of the Ala. & Fl'a R. R. and runs through the woods to the present Pensacola Junction. The Western Union Telegraph line runs from Pensacola, on the east side of the right of way of the Pensacola & Louisville R. R., to the present Pensacola Junction.

To the fourth int'y he answers and says that when he came to Pensacola in 1857 he found the Ala. & Fl'a R. R. located; it was completed in 1860; the Pensacola & Louisville R. R. was located in '69, and completed in 1870, to the best of his knowledge. The Ala. & Fl'a R. R. was operated till 1863, when it was torn up, and a portion adjoining Pensacola was operated from close of the war till the sale of the road in bankruptcy. Pensacola & Louisville R. R. has been operated from the sale in bankruptcy of the Ala. & Fl'a R. R. to the present time.

To the last int'y he answers and says that he knows nothing further.

W'M F. LEE.

90 Sworn to & subscribed before us this 3d day of Feb'y, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

W'm F. Lee, being duly sworn, deposeth and saith, in answer to the first cross-int'y, that there has not been any other, that he knows of, till construction of the Western Telegraph line in 1874.

To the second cross-int'y he answers & says that it does not, as answered to third direct interrogatory.

To the third cross-int'y he answers and says that it did, so far as he knows, but don't know the terms.

To the fourth cross-int'y he answers and says that it has followed the Ala. & Fl'a R. R. up to a certain point, as stated in answer to third direct int'y.

To fifth cross-int'y he answers and says that it was used by Pensacola & Louisville R. R. up to time of construction of Western Union Telegraph line, but he does not know upon what terms; it is still used for local business.

To the sixth cross-int'y he answers and says that he does not know.

To the seventh cross-int'y he answers and says that he has, between Pensacola & Milton, and Pensacola and the navy-yard, but does not know whether there is one between Pensacola and Milview established by plaintiff; one to Milton has been in operation about two years; the one to navy-yard was built in 1874, to the best of his recollection.

To the eighth cross int'y he answers and says that it has, so far as he knows.

W'M F. LEE.

Sworn to & subscribed before us this 3d day of February, 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

91 *Deposition of Peter Knowles.*

Peter Knowles, being duly sworn, deposeth and saith, to the last int'y, that he regarded the Pensacola Telegraph Co. as a monopoly, and as such an injury to Pensacola for following reasons: The president of the company was engaged in several branches of business, viz, banking, ship-brokerage, owner of two pilot-boats, & insurance agen t, &c., thus giving him a great advantage in all these branches of business, as any information coming by telegraph to any parties in these branches of business was known to the president, or could be known to the president of telegraph co., as soon as it was known to parties to whom sent.

PETER KNOWLES.

Sworn to and subscribed to before us this 3d day of February, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

Deposition of William K. Hyer.

William K. Hyer, being duly sworn, deposeth and saith, in answer to first int'y, that said telegraph-line was constructed previous to 1860; was constructed by company called the Pensacola Telegraph Company; said company was incorporated, but don't remember how or when it was incorporated.

To the second int'y he answers and says that it was continuously operated at Pensacola from its erection up to time of evacuation of Pensacola by the confederates in the spring of 1862, after that from various points along Ala. & Fl'a R. R. during the remainder of the war until the occupation of the country by the Federal forces; it was put in operation in 1866, and has been in operation from Pensacola since that time. It has been a profitable one during my association with it

92 as stockholder from its first completion to the year 1867.

To the third int'y he answers and says that it does extend into Ala., about five miles into Escambia County, Ala.

To the fourth int'y he answers and says that it has until the erection of the Western Union Telegraph line in 1874.

To the fifth int'y he answers & says that said monopoly has operated injuriously to the business community of Pensacola and Escambia County.

To the sixth int'y he answers & says that it has been two or three times as great, as far as his knowledge goes. Rate of charges of Western Union Telegraph line from Pensacola to Junction is 30c. p'r 10 words; to Pollard is 30c. p'r 10 words; to Mobile is 60c. p'r 10 words; to New Orleans is 75c. per 10 words; to New York is $1.75 per 10 words.

To the seventh he answers and says that it has been taxed two or three times as much.

To the eighth int'y he answers & says that he thinks not; can't state cost approximately.

To the ninth int'y he answers & says that the United States mails have been carried over said road from time of its construction to present time, and by no other means.

To the last int'y he answers & says that he knows nothing further.

W'M K. HYER.

Sworn to & subscribed before us this 3rd day of Feb'y, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

William K. Hyer, being duly sworn, deposeth and answers, to the first cross-int'y, that there has been none until the erection of the Western Union Telegraph line in 1874.

To the second cross-int'y he answers and says that it does ex-
93 tend along line of right of way of the Ala. & Fl'a R. R. from Pensacola to a point two or three miles south of Ala. State line, when it diverges from said right of way.

To the third cross-int'y he answers & says that he don't know.

To the fourth cross-int'y he answers and says that it has extended along right of way of said R. R. until the last three or four years, when it diverged as stated in answer to second cross-int'y.

To the fifth cross-int'y he answers and says that he don't know.

To the sixth cross-int'y he answers and says that he don't know.

To the seventh cross-int'y he answers and says that he has established lines from Pensacola to all these points, the one to Milton within the last two or three years, the ones from Pensacola to Warrington and Milview within the last year.

To the eighth cross-int'y he answers and says that it has.

W'M K. HYER.

Sworn to & subscribed before us this 3rd day of Feb'y, A. D. 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

Deposition of Louis P. Knowles.

L. P. Knowles, being duly sworn, deposeth and says, in answer to the first int'y, that he is a subscribing witness to said deed, and that same was executed in his presence.

To the second int'y he answers & says that he is a subscribing witness to said papers, and that same was executed in his presence.

LOUIS P. KNOWLES.

Sworn to & subscribed before us this 3rd day of Feb'y, 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

94 *Deposition of H. Baars.*

H. Baars, being duly sworn, deposeth and says, in answer to first int'y, that he don't know.

To the second int'y he answers and says that he don't know.

To the third int'y he answers and says that he don't know.

To the fourth int'y he answers & says that said company has enjoyed a monopoly to his knowledge for three years past, until the erection of the Western Union Telegraph line in 1874.

To the fifth he answers & says that it has operated injuriously.

To the 6th int'y he answers & says that it is about three times the rate on other lines, and has been so since his acquaintance with said line. Rate of charges of defendant from Pensacola to Pollard about 25c.; same to Junction; about 50 c. p'r 10 words to Mobile. To New Orleans, don't know; to New York, don't know exactly.

To the seventh int'y he answers & says that the rate of P. T. Line is about three times greater than on other lines.

To the eighth int'y he answers & says that he thinks not; can't state cost approximately.

To the ninth int'y he answers and says that it is a post-route, but he don't know how long it has been so.

H. BAARS.

Sworn to & subscribed to before us this 3rd day of Feb'y, 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

Depositions of H. H. Knowles.

H. H. Knowles, being duly sworn, deposeth, and for answer to first int'y says that he is a subscribing witness to said deed, and that same was executed in his presence.

H. H. KNOWLES.

95 Sworn to & subscribed before us this 3d day of Feb'y, 1875.

W. A. BLOUNT,
P. K. YONGE,
Commissioners.

EXHIBIT A.

PENSACOLA, FLORIDA,
February 19, 1873.

Col. DAN'L H. CRAM,
President Pensacola & Louisville R. R. Co.:

SIR: Yours, 31st ult., reached me on the 1st inst., and was unnecessary, since it was no reply to questions contained in mine, 29th ult'o.

I prefer addressing the president of the P. & L. R. R. Co. on what pretends to be the company's business, and therefore I again direct my communication to you instead of Mr. Albert Hyer, V. P., as it is not a matter for my consideration who are the "managing owners," or whether he is "subject to your orders and liable to your censure" or not.

As the application to the legislature for authority to construct a telegraph-line was "known to you and meets your approval," and that of the "managing owners" of the P. & L. R. R. Co., I have now only to inform you the Pensacola Telegraph Company will resist any attempt to construct telegraph-lines in Escambia and S't Rosa Counties, where they have exclusive rights under their charter, and declines any further exchange of the courtesies with the P. & L. R. R. Co.

I have instructed all our operators to take no more free business from your company and to require fore-payment in all cases.

Your ob't s'v't,

C. L. LE BARON,
President P. T. Co.

96 In the circuit court of the United States for the fifth judicial circuit, northern district of Florida, at the city of Pensacola.

By his honor Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Pensacola. To Edward L. Owen and Frank D. Sturges, greeting:

Whereas there is a certain controversy now depending in the circuit court of the United States for the northern district of Florida, in said city of Pensacola, between The Pensacola Telegraph Company, plaintiff, and The Western Union Telegraph Company, defendant; and whereas William Orton and Hiram Sibly, material witnesses in said case of

controversy, and cannot attend our said court in person without manifest inconvenience: Now, know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two of you, are hereby authorized and required to cause the said William Orton and Hiram Sibley personally to come before you, and, after being duly sworn, to examine them concerning the said matter of controversy agre'ably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, *and* you are to send the same closed up, under your hands and seals, to our said court, to be held on the first day of March next, together with this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the
97 Supreme Court of the United States, at Pensacola, this 28th day of January, A. D. 1875.

[SEAL.] M. P. DE RIOBOO, *Clerk.*

STATE OF NEW YORK,
County of New York:

We, Edward L. Owen and Frank D. Sturges, being duly sworn, say that we will execute the within commission upon the annexed interrogatives truly and impartially, according to law.

EDWARD L. OWEN.
FRANK D. STURGES.

Sworn to & subscribed before me this 3rd day of February, A. D. 1875.

S. G. LEATHEM,
Notary Public, New York County.

Instructions to the commissioners.

First. At least two comm'rs must join in the execution of the commission.

Second. The names of the commissioners acting must be inserted in the blank space for that purpose in the direction of the commission.

Third. The affidavit on the back of the commission must be signed and sworn to by the comm'rs before any notary public, or a commissioner of deeds for the State of Florida.

Fourth. The following form of deposition should be observed, viz:

Depositions of witnesses, produced, sworn, and examined on the day of , A. D. 1875, at , by virtue of the annexed commission issued out of the clerk's office of the circuit court of the United States for 5th judicial circuit, at Pensacola, for the northern district of Florida, to us directed for the examination of the said witnesses in a cause there depending between the Pensacola Telegraph Company, plaintiff,
98 and the Western Union Telegraph Company, defendant.

On the part of the defendant, of , being duly sworn, deposeth and answers as follows, viz:

First. To the first interrogatory the witness saith that, &c., and so on to each successive interrogatory until the whole are answered.

The witness must then sign the deposition and the commissioners attest the signature by the following jurat:

Sworn to and subscribed before us the day of , 1875.

[L. S.]
[L. S.]
Commissioners.

If there are any cross-interrogatories, the comm'r should proceed with them, inserting the answers immediately following the answers of the direct interrogatories, in the form following:

The said witness answers and deposes to the cross-interrogatories as follows, viz:

First. To the first cross-interrogatory he answers and says, &c.; and the answers to the cross-interrogatories should be signed by the witness and attested by the commissioners in the same manner as directed for the direct interrogatories.

Fifth. When the examination is concluded, the commission, interrogatories, and answers must be enclosed in an envelope, the commissioners must write their names across the seals of the envelope, and having endorsed thereon the title of the cause, thus:

Circuit court of the United States for the fifth judicial circuit, at Pensacola, northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Direct the packet to:

99 Maximo P. de Rioboo, clerk of the circuit court of the United States, northern district of Florida, Pensacola, Florida.

Sixth. Packet containing the commission, &c., may be returned to the clerk of the court by a party in the case, or other person, or by mail.

NOTE.—The usual abbreviations or initials of office, or of the Christian names of the commissioners, postmasters, magistrates, clerks, attorneys, and witnesses will be deemed sufficient.

The circuit court of the United States for northern district of Florida, at Pensacola, Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Interrogatories for William Orton and Hiram Sibley, material witnesses for the defendant, who reside in city of New York, N. Y.

Int. 1. Are you, or have you been, officers of the Western Union Telegraph Company? And, if so, please state what office you held, respectively, or have held.

Int. 2. Please state whether the Western Union Telegraph Company has accepted the provisions of an act of Congress of the U. S. entitled "An act to aid in the construction of telegraph-lines, and to secure the Government use of the same for postal, military, and other purposes," approved the 24th day of July, A. D. 1866; and if the said company has adopted any resolution of acceptance, append a copy, and state who was the acting president of said Western Union Telegraph Company at the time of such acceptance, and state whether such acceptance was

100 made known to the Government of the United States, and whether said resolution was filed in the office of the Postmaster-General, and, if so, when.

Int. 3rd. Please state whether the said Western Union Telegraph Company has performed and discharged the obligations and submitted

to the restrictions of the said act of Congress of 24th July, A. D. 1866; and, if so, state what obligations and what restrictions.

Int. 4th. State whether the Western Union Telegraph Company is the owner and lessee of telegraph-lines extending from Florida to New York, and other lines throughout the United States, and whether its lines are in connection with cables extending to foreign countries, and, generally, the extent of country over & through which its line' are working.

Int. 5th. State whether the said company has acquired from the Pensacola & Louisville Railroad Company all the property, franchises, and privileges conferred on said company by an act of the legislature of Florida entitled "An act to authorize the Pensacola and Louisville Railroad Company to construct, own, and operate a telegraph-line upon the right of way, approved Feb. 14th, 1873."

Int. 6th. Please state who is the president of the International Telegraph Company, a corporation created by the laws of the State of New York, and by whom a majority of the stock of said company is held & owned; and state whether the Western Union Telegraph Company has any control over the operation of its business and cables, and, if so, what.

Int. 7. Please state whether an act entitled "An act to encourage telegraphic communication between the State of Florida and the island of Cuba & other West Indies islands," approved the 2d January, 1866, and passed by the legislature of Florida on the 2d January, 1866, was accepted and acted on by the said International Ocean Telegraph Company, and state whether the said act of the legislature of Florida
101 had any influence in bringing about the location of its lines and opening business between the coast of Florida and the island of Cuba.

Int. 8th. Please state whether the cables of said International Telegraph Company have been laid and are in operation between the State of Florida and the island of Cuba.

Lastly. Do you know or can you set forth any other matters or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

C. C. YONGE & A. E. MAXWELL,
Solicitors for Def't.

Circuit court of the United States States for the northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Cross-interrogatory on behalf of the plaintiff to be addressed to William Orton and Hiram Sibley, witness' on behalf of the defendant.

First. Have not said plaintiff's lines of electric telegraph in the county of Escambia, Florida, since 1866, been so connected with the telegraph system of the United States as to be available for the transmission of telegrams to & from all parts of the world accessible to communication by that system?

C. W. JONES,
G. A. STANLEY, &
R. L. CAMPBELL,
Sol's for Compl't.

102 Depositions of witnesses produced, sworn, and examined on the 3rd day of February, A.D. 1875, at New York, by virtue of the annexed commission issued out of the clerk's office of the circuit court of the United States for the fifth judicial circuit, at Pensacola, for the northern district of Florida, to us directed for the examination of the said witnesses in a cause there depending between the Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendants, on the part of the defendant.

William Orton, of New York, being duly sworn, deposes and answers as follows, viz:

First. To the first interrogatory the witness saith: In March, 1866, I think, I was elected a director and vice-president of the Western Union Telegraph Company, and in July, 1867, I was elected President of that company, and have been re-elected president at every annual election since.

Second. To the second interrogatory the witness saith: The Western Union Company has accepted the provisions of the act referred to in the interrogatory, and adopted a resolution of acceptance the 5th day of June, 1867. I hereto append a copy of said resolution to be made a part of my answer to this interrogatory.

(The same is marked "Ex. 1.—E. L. O., F. D. S.—Feb'y 3rd, 1875.")

Hiram Sibley was acting president of the company at that time. Such acceptance was made known to the Government of the United States, and said resolution of acceptance was filed in the office of the Postmaster-General on or about the 12th day of June, 1867.

Third. To the third interrogatory the witness saith: The Western Union Company has submitted to the restrictions of said act, and has performed the obligations which it imposed. The obligations on the company, imposed by said act, and which it has performed, are to give priority over all other business to telegraphic communications between the several departments of the Government of the United States and their officers and agents, and to accept compensation therefor at rates annually fixed by the Postmaster-General; also, the company is obligated to sell all its telegraph lines, property, and effects to the United States at any time after July 24th, 1871, at an appraised value to be ascertained by five competent, disinterested persons, two of whom shall be selected by the Postmaster-General, two by the company, and one by the four so previously selected.

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Fourth. To the fourth interrogatory the witness said: The Western Union Telegraph Company is the owner of lines extending from Florida to New York, and the owner and lessee of other lines throughout the United States. Its lines also connect in the State of Florida with the lines of the International Ocean Telegraph Company, which connect at Punta Rassa with cables to Key West, Florida, and thence to the island of Cuba, and also is the owner of telegraph-lines extending from New York to and through Nova Scotia, in the Dominion of Canada, which lines connect with cables to Europe.

The lines of the Western Union Telegraph Company extend through or into every State in the Union, except the State of Minnesota, the telegraph-lines in which State connect with the lines of the Western Union Company, and also into every Territory, except Dacota and Arizona. The lines in Dacota connect with those of the Western Union Company, by arrangement with the company owning them, as in the case of Minnesota, and the lines in Arizona, which were built and are owned by the United States, connects with the Western Union lines at San Diego, in the State of California.

The Western Union Company has now in operation 72,500 miles of line, and 177,500 miles of wire.

104 Fifth. To the fifth interrogatory the witness saith: The Western Union Telegraph Company has acquired from the Pensacola and Louisville Railroad Company all the property, franchises, and privileges conferred on said railroad company by an act of the legislature of Florida entitled "An act to authorize the Pensacola and Louisville Railroad Company to construct, own, and operate a telegraph-line upon their right of way," approved February 14th, 1873, so far as relates to rights and property for telegraph purposes.

Sixth. To the sixth interrogatory the witness saith: I am the president of the International Ocean Telegraph Company, a corporation created by the laws of the State of New York, and which owns and operates lines in the State of Florida, and cables connecting therewith, extending from Punta Rassa to Key West and thence to the island of Cuba. A majority of the capital stock of said company is owned and held by the Western Union Telegraph Company. The Western Union Company has such control over the operation of its business and cables as results naturally from its ownership of a majority of the stock.

Seventh. To the seventh interrogatory the witness saith: I was not connected with the International Ocean Telegraph Company at the time referred to in the interrogatory, except as an officer of the Western Union Company, which owned stock in the said International Ocean Telegraph Company. I had some general knowledge of its affairs, however, and I believe that the act of the legislature of the State of Florida referred to in the interrogatory did have an important influence in bringing about the location of its lines and opening business between the coast of Florida and the island of Cuba.

Eight. To the eight interrogatory the witness saith: Said cables have been laid, and they are in operation between the State of Florida and the island of Cuba.

Lastly. To the last interrogatory the witness saith: The Western Union Company, in making the contract with the Pensacola and Louisville Railroad Company for the extension of the Western Union lines along the road and right of way of the railroad company to Pen-

105 sacola, was not actuated by a desire to get the business of the Pensacola Telegraph Company, nor directly to increase the profits of the Western Union Company.

The two principal reasons for the action of the Western Union Company were, first, a desire to give the railroad company a telegraph-line along its road which extended at the same time along other railroads in the Southern States with which said Pensacola and Louisville Railroad Company connected; and second, to enable the Western Union Company to render better service to the United States in respect of messages between the several departments of the Federal Government and the city of Pensacola.

WILL'M ORTON.

Sworn to and subscribed before us the 3rd day of February, 1875.

EDWARD L. OWEN,
FRANK D. STURGES,
Commissioners.

The said witness answers and deposes to the cross-interrogatory as follows, viz:

To the said cross-interrogatory the witness saith: I believe that the plaintiffs have had a line of telegraph in the county of Escambia,

Florida, since 1866, but its operation has not been satisfactory to the Western Union Company, nor, as I believe, to a considerable number of those who have been obliged to send messages by them.

I am informed, and believe, that since the extension of the Western Union Company's lines to Pensacola that telegraph business between said city and other parts of the world has materially increased; such increase being due in part to reduce' rates and in part to greater promptness and accuracy in the transmission of messages, which result inevitably from the abolition of repetition at the station where the lines of plaintiff and defendant connected.

There was such a connection between the lines of said plaintiff and those of the Western Union Company as rendered it practicable to transmit telegrams over the lines of both to and from all parts of the world.

WILL'M ORTON.

106 Sworn to and subscribed before us the 3rd day of February, 1875.

EDWARD L. OWEN,
FRANK D. STURGES,
Commissioners.

Hiram Sibley, of Rochester, New York, being duly sworn, deposeth and answers as follows, viz:

First. To the first interrogatory the witness saith: I have been the president of the Western Union Telegraph Company for many years, and also have been director, vice-president, and acting president; I was acting president for about a year.

Second. To the second interrogatory the witness saith: The Western Union Telegraph Company accepted the provisions of the act of Congress referred to in this interrogatory, and adopted a resolution of acceptance, which was entered upon the minutes of the company June 5th, 1867, and such acceptance was made known to the Government of the United States. I was the acting president of the company at that time, and approved the resolution, and a copy of said resolution was sent to the Postmaster-General.

(Ex. 1, annexed to the deposition of Mr. Orton in this case, is a copy of said resolution.)

Third. To the third interrogatory the witness saith: During my continuance as an officer of the company and since, so far as I know, the company has performed and discharged the obligations and submitted to the restrictions of said act of Congress referred to in this interrogatory. The obligations are: to give priority to Government messages, and send them at such rates as are determined by the Postmaster-General; and to sell the property to the Government on certain conditions. The restriction is that the company shall not transfer the rights and privileges granted to any other corporation, association, or person.

Fourth. To the fourth interrogatory the witness saith: The Western Union Telegraph Company is the owner of telegraph-line extending from Florida to New York, and is the owner and lessee of other
107 lines extending through the United States. It also has connection with the International Ocean Telegraph Company, whose cable' connect with the West India Islands, and they also connect with the Atlantic Cable Company, whose cables connect with Europe. Its lines extend to nearly all the States and Territories of the United States.

Fifth. To the fifth interrogatory the witness saith: I cannot answer

this interrogatory. That transpired since my active connection with the company terminated.

Sixth. To the sixth interrogatory the witness saith: I cannot answer this interrogatory, for the same reason as given in my previous answer.

Seventh. To the seventh interrogatory the witness saith: I know that the passage of the act referred to in this interrogatory influenced both the Western Union and the International Ocean Telegraph Company in determining the location of their lines, and in opening business between Florida and the island of Cuba.

Eight'. To the eight' interrogatory the witness saith: They have been laid and have been in operation, but as to whether they are now in operation I cannot say.

Lastly. To the last interrogatory the witness saith: I don't know of anything further of benefit to either of the parties to this suit.

HIRAM SIBLEY.

Sworn to and subscribed before us the 3rd day of February, 1875.

EDWARD L. OWEN,
FRANK D. STURGES,
Commissioners.

The said witness answers and deposes to the cross-interrogatory as follows, viz:

To the said cross-interrogatory the witness saith: I can't say.

HIRAM SIBLEY.

Sworn to and subscribed before us the 3rd day of February, 1875.

EDWARD L. OWEN,
FRANK D. STURGES,
Commissioners.

108 UNITED STATES OF AMERICA:

POST-OFFICE DEPARTMENT,
Washington, D. C., August 4th, 1874.

I, J. W. Marshall, Postmaster-General of the United States of America, hereby certify that the annexed is a true copy of the original acceptance by the Western Union Telegraph Company of the act approved July 24, 1866, now on the files of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, at the general post-office, in the city of Washington, the day and year above written.

{ POST-OFFICE DEPARTMENT, UNITED STATES OF AMERICA. } J. W. MARSHALL, *Postmaster-General.*

Ex. 1. E. L. O. F. D. S. Feb. 3rd, 1875.

WESTERN UNION TELEGRAPH COMPANY.

Meeting of the board of directors, at the executive office, 145 Broadway, New York, June 5th, 1867.

Resolved, That this company does hereby accept the provisions of the act of Congress entitled "An act to aid in the construction of telegraph-lines, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 24, 1866, with all the power', privileges, restrictions, and obligations conferred and required

thereby, and that the secretary be, and is hereby, authorized and directed to file this resolution with the Postmaster-General of the United States, duly attested by the signature of the acting president of the company, and the seal of the corporation, in compliance with the fourth section of said act of Congress.

Adopted unanimously.

Ex. 1. E. L. O. F. D. S. Feb. 3d, 1875.

(Signed) HIRAM SIBLEY,
Acting President of Western Union Telegraph Co.

{ WESTERN UNION TELEGRAPH CO., SEAL. } (Signed) O. H. PALMER,
Sec'y W. U. Tel. Co.

109 We, Edward L. Owen and Frank D. Sturges, the commissioners appointed by the annexed commission to examine under oath William Orton and Hiram Sibley, the witnesses named in the said commission, upon the interrogatories and cross-interrogatory annexed thereto, do hereby certify that the time mentioned in the caption to the said testimony we were attended by the said witnesses, William Orton and Hiram Sibley, who, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, answered the interrogatories and cross-interrogatory as in said answers contained; that their testimony was by us reduced to writing and subscribed and sworn to by the said witnesses respectively.

We further certify that we are in no manner connected with any of the parties to said controversy, nor with their attorneys or counsel, nor have we any interest whatever in the result of the said controversy.

Dated New York, February 3rd, 1875.

EDWARD L. OWEN,
FRANK D. STURGES,
Com'rs.

110 In the circuit court of the United States for fifth judicial circuit, northern district of Florida, at the city of Pensacola.

By his honer Morrison R. Wait', Chief-Justice of the Supreme Court of the United States, at Pensacola, to Stephen Croom and Richard B. Owen, greeting:

Whereas there is a certain controversy now depending in the circuit court of the United States for the northern district of Florida, in said city of Pensacola, between the Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendant; and whereas C. G. Merriweather material witness in said case of controversy, and cannot attend our said court in person without manifest inconvenience:

Now know ye that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you or any two of you are hereby authorized and required to cause the said C. G. Merriweather personally to come before you, and, after being duly sworn, to examine him concerning the said matter of controversy agreeably to the interrogatories hereunto annexed, and the answer to the same being plainly and distinctly written, and you are to send the same, closed up, under your hands and seals, to our said court, to be held on the fifth day of March next, together with 'his writ.

Witness the honorable Morrison R. Wait', Chief-Justice of the Supreme Court of the United States, at Pensacola, this 29th day of January, A. D. 1875.

M. P. DE RIOBOO, *Clerk.*

STATE OF ALABAMA, *County of Mobile:*

We, Stephen Croom & Richard B. Owen, being duly sworn, say that we will execute the within commission upon the annexed interrogatories truly and impartially, according to law.

STEPHEN CROOM.
RICHARD B. OWEN.

Sworn to and subscribed before me this 2d day of February, A. D. 1875.

111 SAM'L C. MULDON,
Notary Public, Mobile County.

Instructions to the commissioners.

First. At least two comm'rs must join in the execution of the commission.

Second. The names of the commissioners acting must be inserted in the blank space for that purpose in the direction of the commission.

Third. The affidavit on the back of the commission must be signed and sworn to by the commissioners before any notary public or commissioner of deeds, &c., for the State of Florida.

Fourth. The following form of deposition should be observed, viz:

Deposition of witnesses produced, sworn and examined on the day of , A. D. 1875, at , by virtue of the annexed commission issued out of the clerk's office of the circuit court of the United States for 5th judicial circuit, at Pensacola, for the northern district of Florida, to us directed for the examination of the said witness, in a cause there depending between the Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendant.

On the part of the defendant , of , being duly sworn, and answers as follows, viz:

First. To the first interrogatory the witness saith: That, &c., and so on to each successive interrogatory until the whole are answered.

The witness must then sign the deposition, and the commissioner attest the signature by the following jurat:

Sworn to and subscribed before us the day of , 1875.

[L. S.]
[L. S.]
Commissioners.

If there are any cross-interrogatories, the commissioners should proceed with them, investing the answers immediately following the answers of the direct interrogatories in the form of the following:

The said witness answers and deposes to the cross-interroga-
112 tories as follows, viz:

First. To the first cross-interrogatory he answers and says, &c.; and the answers to the cross-interrogatories should be signed by the witness and attested by the commissioners in the same manner as directed for the direct interrogatories.

Fifth. When the examination is concluded, the commission, interrogatories, and answers must be enclosed in an envelope, the commissioners must write their names across the seals of the envelope, and having endorsed thereon the title of the same, thus:

Circuit court of the United States for the fifth judicial circuit, at Pensacola, northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

direct the packet to Maximo P. de Rioboo, clerk of the circuit court of the United States, northern district of Florida, Pensacola, Florida.

Ninth. Packets containing the commission, &c., may be returned to the clerks of the court by a party in the case, or other person, or by mail.

NOTE.—The usual abbreviations or initials of office, or of the Christian names of the commissioners, postmasters, magistrates, clerks, attorneys, and witnesses, will be deemed sufficient.

Circuit court of the United States for the northern district of Fl'a.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Interrogatories for C. G. Merriweather, a material witness for defendant, who resides in city of Mobile, Ala.

Int. 1. State, as far as your knowledge extends, when the line of telegraph known as the Pensacola Telegraph Company line, extend-
113 ing from Pensacola in the direction on Montgomery, was constructed, and how long it has been operated. If any suspensions, state what.

Int. 2d. State whether the original company was incorporated; and, if so, was it by special act or under a general incorporation law?

Int. 3rd. State what has been the rate of charges of the said company as compared with other lines. State the rates of that company; and state rates of other companies, or neighboring lines, and state rates of Western Union on their line between Pensacola and Pollard, & the Pensacola Junction, Mobile, New Orleans, & New York.

Int. 4th. State as nearly as you what amount of business has been done over the line of the Pensacola Telegraph Company in the years 1870, 1871, 1872, 1873, 1874.

Int. 5th. State whether the country traversed by said line is of such character as to make the construction of a telegraph-line more than usually expensive. State the necessary cost of such line.

Lastly. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth same fully and at large in your answer.

C. C. YONGE &
A. E. MAXWELL,
Solicitors for D'f't.

Circuit court of the United States for the northern district of Florida.

THE PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

114 Cross-interrogatories on behalf of the plaintiff to be addressed to C. G. Merriweather, a witness on behalf of defendant.

First. If you should answer the first direct interrogatory, state the

sources of your knowledge upon which you found your answer. Do you speak from your own personal information or from what you have heard others say? If you say your information was derived from others, give the names of your informants, & at what time they so informed you?

Second. Does not the plaintiff's line of electric telegraph from Pensacola to the southern boundary of Alabama extend through the county of Escambia, Florida, and along the right of way of the railway formerly owned by the Alabama & Florida Railroad Company? If yea, has it not been so situated since 1866?

Third. Did not said Alabama & Florida Railroad Company use the plaintiff's said line of telegraph up to the time it went into bankruptcy; &, if so, on what terms was it so used?

Fourth. Has not the plaintiff's said line of telegraph extended along the right of way of said railway ever since said railway became the property of the Pensacola & Louisville Railroad Company?

Fifth. Did the Pensacola & Louisville Railroad Company make use of the plaintiff's said telegraph-line afeter said company became the assignee of the Alabama & Florida Railroad Company; &, if so, on what terms, & for how long a time was it so used?

Sixth. Have not said plaintiff's lines of telegraph since 1866 been so connected with the telegraph system of the United States as to be available for the transmission of telegrams to & from all parts of the world accessible to communication by that system?

C. W. JONES,
G. A. STANLEY,
& R. L. CAMPBELL,
Sol's for Compl't.

115 Deposition of witness produced, sworn, and examined on the second day of February, 1875, at Mobile, Alabama, by virtue of the annexed commission, issued out of the clerk's office of the circuit court of the United States for 5th judicial circuit, at Pensacola, for the northern district of Florida, to us directed, for the examination of said witness in a cause there depending between the Pensacola Telegraph Company, plaintiff, and the Western Union Telegraph Company, defendant.

On the part of the defendant, CHARLES G. MERREWEATHER, being duly sworn, deposeth and answers as follows:

First. To the first interrogatory the witness saith: The Pensacola Telegraph Line, known as that of the Pensacola Telegraph Company, was first constructed in 1860 or 1861, shortly before the commencement of the war. After the capture by the Federal forces in 1862, as I believe, of Pensacola, said line was abandoned, and its use was suspended until 1866, when it was reconstructed and has been operated ever since.

Second. To the second interrogatory witness saith: The original company was incorporated by a special act of the legislature of the State of Florida.

Third. To the third interrogatory witness saith: The Western Union is the only neighboring telegraph-line with which the rates of the Pensacola Telegraph Company can be compared, and their charges are about three times as great as those of the Western Union Company. On the Western Union telegraph-line the rate from Pensacola to Pollard is thirty cents for ten words, to Pensacola Junction thirty cents, to Mobile sixty cents, to New Orleans seventy-five cents, and to New

York, one dollar and seventy-five cents. The rate of the Pensacola Company from Pensacola to Pollard, which is its entire length, is one dollar for ten words.

Fourth. To the fourth interrogatory witness saith: I cannot
116 tell the amount of business said company did in the years inquired of, but know that their business largely increased in the years 1873 and 1874, up to the time that the Western Union Company constructed their lines from Pollard to Pensacola, in August, 1874.

Fifth. To the fifth interrogatory witness saith: The character of the country is un'sually favorable for the construction of a telegraph line. The necessary cost of such a line as that of the Pensacola Telegraph Company could not well be more than four thousand dollars.

Lastly. To the last interrogatory witness saith: I am not aware that I can say anything in answer to this interrogatory. I will add that the Southern and Atlantic telegraph-line has the same rate of charges wherever it is operated as the Western Union line.

CHARLES G. MERIWETHER.

Sworn to and subscribed before us the 2d day of February, A. D. 1875.

STEPHENS CROOM, [L. S.]
RICHARD B. OWEN, [L. S.]
Commissioners.

The said witness answers to the cross-interrogatories as follows, viz:

First. To the first cross-interrogatory he answers and says: The statement' made by me in my answer to the first direct interrogatory are made from my own knowledge.

Second. To the second cross-interrogatory witness saith: The plaintiff' telegraph-line from Pensacola to the southern boundary of Alabama does extend through the county of Escambia, Florida, and along the right of way of the railway formerly owned by the Alabama and Florida Railroad Company, and it has been so situated since 1866.

Third. To the third cross-interrogatory witness saith: The Alabama and Florida Railroad Company did use the plaintiff's telegraph-
117 line up to the time it (the railroad co.) went into bankruptcy, and I understand that they used it free of charge.

Fourth. To the fourth cross-interrogatory witness said: The plaintiff's said line of telegraph has extended along the right of way of said railway ever since said railway became the property of the Pensacola and Louisville Railroad. For a few miles south of Pensacola Junction the present railway-track has diverged from the old track, but the plaintiff's telegraph-line still continues along the old right of way.

Fifth. To the fifth cross-interrogatory witness saith: My understanding is that the Pensacola and Louisville Railroad Company did make use of plaintiff's telegraph-line after said railroad company became the assignee of the Alabama and Florida Railroad Company, and that they used it free for a few months until the plaintiff learned that the railroad company had applied to the legislature of Florida for a charter to construct a telegraph-line of its own along its route. My understanding on this subject is derived from the officers of the railroad company and from the officers of the plaintiff telegraph company.

Sixth. To the sixth cross-interrogatory witness saith: I answer this cross-interrogatory in the affirmative.

CHA'S G. MERIWETHER.

Sworn to and subscribed before *us* the 2d day of February, 1875.

STEPHENS CROOM, [L. S.]
Commissioner.

STATE OF ALABAMA,
Mobile County:

We, Stephens Croom and Richard B. Owen, the commissioners named in the annexed commission, hereby certify that on the day mentioned in the caption to the foregoing deposition we were attended by Charles G. Meriwether, the witness in said commission named, & thereupon the foregoing deposition was taken & reduced to writing by us in presence of said witness, & from his statements in answer to the annexed direct & cross interrogatories, & after carefully reading his said answers over to him, he signed & swore to the same before us as is above written.

In witness whereof we have hereunto set our hands this 2d day of February, 1875.

STEPHENS CROOM,
RICHARD B. OWEN,
Commissioners.

118 PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } Bill for injunction.

This cause coming on to be heard for a final decree on the bill, answer, replication, and proofs, and the parties being represented by their respective solicitors, and the pleadings and proofs herein been received, the court, not being advised of its judgment, took the said cause under advisement.

And on another day, to wit, Monday, March 8th, A. D. 1875, the following order was made:

PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } Bill for injunction.

This cause coming on to be heard on the bill, answer, replication, and proofs, and the court being now advised of its judgment, it is ordered, adjudged, and decreed that the prayer of the complainant for an injunction be denied, and that the bill be dismissed, and that the costs be taxed against the complainant.

And thereafter, on the same day, to wit, the 8th day of March, in the year of our Lord one thousand eight hundred and seventy-five, the said complainant, during the said term in open court, applied for and entered his appeal from said decree to the Supreme Court of the United States, which said entry of appeal is as follows:

PENSACOLA TELEGRAPH COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Now, at this day, came the defendant in the above-stated case, and in open court prayed for an appeal to the Supreme Court of the United States from the decree of this court dismissing the bill of com-
119 plaint, which appeal is hereby granted upon entering into bond in the sum of five hundred dollars.

And afterwards, upon the same day, to wit, the 8th day of March, A. D. 1875, the defendant filed his bond, which, with the approval thereof, is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida.

Know all men by these presents that we, The Pensacola Telegraph Company and Joseph M. Le Baron and George Marquis, all of Pensacola, county of Escambia, State of Florida, are held and firmly bound unto the Western Union Telegraph Company, a corporation created and existing under the laws of the State of New York, in the sum of five hundred dollars, for the payment of which well and truly to be made we bind ourselves and each of us jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Given under our hands and seals this 8th day of March, A. D. 1875.

The condition of the above obligation is such that whereas the said circuit court, on the 8th day of March, A. D. 1875, did, by a final order and decree, dismiss a bill in equity filed by the said Pensacola Telegraph Company against the said Western Union Telegraph Company; and whereas the said Pensacola Telegraph Company, in order to obtain a reversal of said order and decree, hath prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Pensacola Telegraph Company shall prosecute its said appeal to effect, and shall answer all damages and costs if it shall fail to make good its said appeal, then this obligation to be void; otherwise, the same shall remain in full force and virtue.

PENSACOLA TELEGRAPH COMPANY, { PENSACOLA SEAL. TELEGRAPH. }
By C. L. LE BARON,
President.
J. M. LE BARON. [SEAL.]
GEORGE MARQUIS. [SEAL.]

Approved open court this March 8, 1875.

W. B. WOODS, *Judge.*

120 STATE OF FLORIDA,
Escambia County:

Joseph M. Le Baron and George Marquis, sureties in the above bond, being duly sworn, say that we are each worth the amount of the above bond over and above all our debts and legal exemptions.

J. M. LE BARON.
GEORGE MARQUIS.

Sworn to & subscribed before me this 8th March, A. D. 1875.

M. P. DE RIOBOO, [SEAL.]
U. S. Commissioner.

Filed March 8, 1875.

M. P. DE RIOBOO, *Clerk.*

121 U. S. circuit court, northern district of Florida.

THE PENSACOLA TEL. CO.
vs.
THE WESTERN UNION TEL. CO.

MARCH TERM, 1875.

This was a cause in equity which was submitted on the pleadings and evidence for final decree.

R. L. Campbell, Cha's W. Jones, and G. A. Stanley for complainants, C. C. Yonge and E. A. Maxwell for defendant.

Wood, circuit judge:

The bill avers, in substance, that on the 11th of December, 1866, the

legislature of the State of Florida passed an act by which it made the complainant company a body-corporate, and conferred upon said company the sole and exclusive right and privilege of establishing and maintaining lines of electric telegraph in the counties of Escambia and Santa Rosa; that in pursuance of authority conferred by its act of incorporation the said company has erected a line of telegraph along the right of way of the Alabama and Florida Railroad Company within the county of Escambia, from Pensacola to the Alabama line, a distance of 47 miles.

That by virtue of the pretended authority contained in an act of the legislature of Florida, approved February 18th, 1874, the defendant company, disregarding the exclusive right conferred upon complainant by its charter, is proceeding to erect in the county of Escambia and along the identical railway route where the line of complainant is erected, a line of electric telegraph, and it is the purpose of defendant to use its line where erected for the transmission of telegraphic dispatches for hire. That the erection and use of said line will greatly impair the value of the line erected by complainant and deprive it of its exclusive privilege in the counties of Escambia and Santa Rosa, granted by the legislature of Florida.

The bill prays that defendant may be restrained from the erection and use of said line of telegraph within the county of Escambia, in the State of Florida.

The answer admits that the defendant company is erecting a line of telegraph from Pensacola to the Alabama State line, all within the county of Escambia, in the State of Florida. It avers that the line will follow the right of way of the Louisville and Pensacola
122 Railroad, from which it has obtained a license to erect its line upon said right of way, and it claims the right to erect and use its line for the purpose of *of* transmitting messages by telegraph for hire, by virtue of authority granted by the legislature of Florida, and also by virtue of an act of Congress approved July 24, 1866. The answer avers that the defendant has filed with the Postmaster-General its written acceptance of the restrictions and obligations required by said act.

As in my judgment the law of Congress is sufficient authority for the acts of the defendant, it will only be necessary to decide this case to consider its provisions.

It is entitled "An act to said in the construction of telegraph-lines and to secure to the Government the use of the same for postal, military, and other purposes," and is found on pp. 22, 222, 14 Statutes at Large.

The first section declares that any telegraph company now organized, or which may hereafter be organized under the laws of any State of this Union, shall have the right to construct, maintain, and operate lines of telegraph * * along any of the military or post roads of the United States which have been or may hereafter be declared such by act of Congress.

Section 2 provides that telegraphic communication between the several Departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General.

The 3d section among other things provides that the United States may, at any time after the expiration of five years after the passage of this act, for postal, military, or other purposes, purchase all the telegraphic lines, property, and effects of any or all of said companies at an appraised value to be ascertained by five competent, disinterested persons, to be appointed as is provided for in this section.

The 4th and last section declares that before any telegrap' company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster-
123 General of the restrictions and obligations required by this act. By an act of Congress approved , all railroads are declared to be post-roads.

This act of July 24th, 1866, whose provisions have just been stated, was, it will be observed, in force before the passage of the act of the legislature of Florida incorporating the complainant and giving it exclusive privileges.

The Constitution of the United States, article V, declares that this Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

If Congress had power to pass this act it would seem to follow that the act of the legislature of Florida could not override it.

It will be observed that act contemplates the use of the telegraph-lines for postal, military, and other purposes; that it gives the business of the several Departments and officers of the Government the priority over all other business, and at rates be prescribed by the officers of the Government, and that it provides for the purchase at an appraised value by the Gov't, if it shall so elect, of the lines of the companies which take advantage of this act, and the companies are required to assent to these conditions.

The power of Congress to pass the act may be referred to the power to regulate commerce among the several States, or to the power to establish post-offices and post-roads, or to the power to raise and support armies, or to the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

The use of the electric-telegraph by the Departments and officers of the Government has become absolutely necessary to the carrying on of the operations of the Government. The functions of the Government either in war or in peace could not now be carried on without its use. The power, therefore, to secure its advantages must necessarily exist in Congress.

124 It is not supposed, nor is it claimed by defendant, that the act of Congress gives a telegraphic company the right to occupy the right of way owned by railroad companies without their consent; that right of way of a railroad company is private property and cannot be taken for public or private use without compensation.

The main purpose of this law is to prevent just such legislation by the State as that set up by the complainant in this case. If every State legislature should undertake to pass such charters as that granted to the Pensacola Telegraph Company the operations of the General Government, so far as they are carried on by the telegraph, would be greatly impeded if not absolutely obstructed.

But it is claimed by the counsel for the Pensacola Telegraph Company that it was not the purpose of the act of Congress to authorize the telegraph companies of one State to erect telegraph-lines along post-roads within the territory of another State. It would seem to be a sufficient answer to this that the act itself makes no such restriction. Its language is plain and unequivocal: "Any telegraph company now organized, or which may hereafter be organized, under the laws of any State of this Union, shall have the right to construct and operate lines

of telegraph * * along any of the military or post-roads of the United States which have been or may hereafter declared such."

There is no such restriction as the complainant insists upon. Such a restriction, it is plain to see, would defeat the object of the act, which is to provide telegraph-lines all over the country, of which the Government should have the priority of use at reduced rates and which it may purchase at its option.

Upon the whole case I am of opinion that so much of the act of the legislature of Florida as purported to give the exclusive right to the complainant to erect and use lines of telegraph in the counties of Escambia and Santa Rosa was in conflict with the act of Congress, and therefore null and void.

These views coincide with the opinion expressed in the case of the Western Union Telegraph Company vs. The Atlantic and Pacific
125 States Telegraph Company, 5 Nevada, 102.

The result is that the complainant has not shown itself entitled to the injunction prayed for by its bill.

The bill must therefore be dismissed at complainant's cost.

Decree accordingly.

Filed March 10, 1875.

M. P. DE RIOBOO, *Clerk.*

126 UNITED STATES OF AMERICA,
Northern District of Florida, at Pensacola:

I, Maximo P. de Rioboo, clerk of the United States circuit court in and for said district, at Pensacola, that the foregoing one hundred and twenty-five pages constitute a true copy of all the proceedings and a correct copy and transcript of the record of the decree in the case of The Pensacola Telegraph Company, complainant, and the Western Union Telegraph Company, defendant, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the 6th day of August, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] M. P. DE RIOBOO, *Clerk.*

127 Supreme Court of the United States.

THE PENSACOLA TELEGRAPH COMPANY, appellant,
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THE WESTERN UNION TELEGRAPH COMPANY.

And afterwards, to wit, on the twenty-second day of March, A. D. 1877, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Pensacola Telegraph Company, appellant, by its solicitors, C. W. Jones and J. B. C. Drew, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, the court below erred in dismissing the bill of the complainant, the said Pensacola Telegraph Company, and in refusing to grant the relief prayed in said bill; and the said Pensacola Telegraph Company prays that the decree dismissing said bill may be

reversed, annulled, and altogether held for nought, and that such order may be made herein as the nature of this case may require.

C. W. JONES AND J. B. C. DREW,
Counsel for Appellant.

(Indorsed:) Sup. Court U. S., 1876, Octo. term. No. 364. The Pensacola Telegraph Company, app't, vs. The Western Union Telegraph Co. Assignment of Error. Filed 22 March, 1877.

(Indorsement on cover:) No. 128. The Pensacola Telegraph Company, appellant, vs. The Western Union Telegraph Company. N. Florida C. C. U. S. Filed 21st September, 1875.

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 128.

THE PENSACOLA TELEGRAPH COMPANY, APPELLANT,

vs.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

ABSTRACT OF PLEADINGS.

Judd & Detweiler, Printers

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 128.

THE PENSACOLA TELEGRAPH COMPANY, APPELLANT,

vs.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

ABSTRACT OF PLEADINGS.

The original bill of complaint was filed on the 27th day of July, 1874. An amended bill was filed on the 30th day of July, 1874. The amended bill shows that the appellant is a corporation created by the laws of Florida. That by an act entitled "An act to incorporate the Pensacola Telegraph Company," approved on the 11th day of December, 1866, the Legislature of Florida did constitute the several persons named in said act a body corporate, the better to enable them to construct, maintain, and operate lines of electric telegraph within the county of Escambia, in said State of Florida, which would facilitate communication and intercourse between the people of said county and persons and places beyond said State.

Said act is as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That William H. Judah, Charles L. Le Baron, E. E. Simpson, John Brosnaham, Samuel McClellan, William J. Keyser, J. G. Thornton, and A. L. Avery, and their successors, are hereby constituted a body-corporate under the style of the Pensacola Telegraph Company, and that such corporation shall enjoy the sole and exclusive privilege and right of establishing and maintaining lines of electric telegraph in the counties of Escambia and Santa Rosa, either from different points within said counties or connecting with lines coming into said counties, or either of them, from other points in this or any other State.

SEC. 2. *Be it further enacted*, That the capital stock of said company shall be five thousand dollars, divided into shares of one hundred dollars each, with the privilege of increasing said stock to such amount as the stockholders may, from time to time, determine to be necessary to meet the wants of the public; and whenever a vote of the stockholders shall be taken, each stockholder shall be allowed one vote in person or by proxy for every share owned by him.

SEC. 3. *Be it further enacted*, That the authority of the said corporation shall be invested in a board of five examiners, one of whom shall be president, which said board shall be annually elected by the stockholders in such manner as may be prescribed by the by-laws of said corporation; and the said president and board of managers shall hold their offices until their successors shall have been elected and qualified.

SEC. 4. *Be it further enacted*, That the said company is hereby authorized to locate and construct its lines of telegraph in the counties of Escambia and Santa Rosa as aforesaid, along and upon any public road or highway, or across any water, or upon any railroad or private property, for which permission shall first have been obtained of the proprietors thereof, by the erection and construction of all the necessary fixtures, including posts, piers, or abutments, for sustaining the wires when stretched through the air, and the necessary excavations when placed under the ground, but the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters.

SEC. 5. *Be it further enacted*, That said company shall have

power, by agreement with other persons or bodies-corporate, to connect by lease, purchase, or otherwise, their lines of telegraph constructed within or without this State.

SEC. 6. *Be it further enacted*, That said company in the construction and maintainment of their lines as aforesaid, shall have a right to cut down or remove any trees, except ornamental or shade trees, which may be within the limits of the highways, and which would obstruct the erection or construction of their lines, or injure them by falling, and trees standing upon lands by the side of any road by which the said lines shall be located may also be cut down or removed, if necessary for the safety of such lines of telegraph, and the owners of said lands shall be entitled to compensation therefor, to be ascertained, if the parties do not agree, in the same manner as damages are ascertained for land taken for highways; and the said company shall be held to pay the amount so ascertained.

SEC. 7. *Be it further enacted*, That it shall be the duty of the company, whenever any line constructed by them shall be in readiness for operation, to receive messages from all persons or corporations on the payment of their usual charges and under the general rules and regulations of said company, and transmit the same in good faith and without partiality: *Provided, however*, That nothing in this act shall exonerate said company from liability for the payment of damages at common law for any breach of contract or good faith.

Passed the House of Representatives December 1, 1866.
Passed the Senate December 6, 1866.
Approved by the Governor December 11, 1866.

That in pursuance of the said act, and under its authority, the capital stock of said company was fully subscribed and paid, and said company having obtained permission from the Alabama and Florida Railroad Company to erect a line of telegraph along the line of its road, did, about the said year 1866, erect, at great expense, a permanent and substantial line of telegraph from the city of Pensacola, in said county and State, and along the line of said railway to the southern boundary of the State of Alabama, a distance of forty-seven miles.

That the favorable charter granted by said act was the only inducement to the investment of capital in the construction of said line of telegraph, as during the first years of its existence the company received no profits from their investment.

That not until now have any of the large telegraph corporations of the country regarded the business of Pensacola of sufficient importance, or as offering sufficient profit, to induce them to extend their lines into said county; and it was not until the enterprise, patience, and industry of appellant's officers and agents had shown that their undertaking was a successful one, that the appellee attempted or offered to construct a telegraph line in said county.

That appellant has conformed in all things to the provisions of said charter, and in addition to the line aforesaid, has constructed two other lines in said county for the convenience of the people thereof, and the value of the property, held under its charter, is not less than fifteen thousand dollars.

That by the provision of said charter, appellant is entitled to the exclusive right and privilege of erecting, maintaining, and operating telegraph lines in said county and State, at least for the period of twenty years from the time of the passage of said act of incorporation, which is not yet expired.

That on or about the 14th day of February, 1873, the Legislature of the State of Florida, disregarding the rights of appellant under its said charter, and in violation of the contract between appellant and the State of Florida, evidenced by said charter, passed an act entitled "An act to authorize the Pensacola and Louisville Railroad Company to construct, own, and operate a telegraph line upon their right of way," which act was amended by an act entitled An act to amend the same, approved February 18, 1874.

That under the pretended authority of said last-mentioned act, the appellee, a corporation created and existing under

the laws of the State of New York, by its officers and agents, is now erecting, against the protest, and in violation of the rights of appellant, as aforesaid, a line of telegraph from the city of Pensacola in said county and State, to the southern boundary of Alabama, and along the identical railway line where appellants' line of telegraph is and has been located since the said year 1866.

That it is the intention of appellee to use the line now erecting as aforesaid for the transmission of telegraph messages for the public of said county and State, and for compensation to be prescribed by appellee.

That by the erection and operation of said line of telegraph by appellee, the property of appellant, created by its said charter, will become valueless, and it will lose all the benefits of the franchises conferred upon it by its said charter, and which constituted the sole inducement to the investment of its corporators in the erection of said lines of telegraph.

Appellant prays for perpetual injunction to restrain appellee, its officers, agents and attorneys, from erecting, using or maintaining any lines of telegraph in said county and State, and from interfering with the exclusive rights and privileges of appellant under its said charter, and for general relief. (Fols. 6 to 9.)

The appellees filed their answer to appellant's bill on the 3d day of August, 1874.

The appellees admit the granting of the charter to the appellant by the Legislature of Florida, as stated in the bill, but denies that said charter recites that the object or purpose of the said exclusive grant was to facilitate communication and intercourse between the people of said county and persons and places beyond the State.

It denies that appellant obtained permission from the Alabama and Florida Railroad Company in any legal mode, valid and binding upon said railroad company and its as-

signs, to erect a telegraph line along the line of its roads, and alleges that the Pensacola and Louisville Railroad Company became, in the year 1872, the assignee, owner and proprietor of the Alabama and Florida railroad, and all the appurtenances, franchises, &c., of said company, including its right of way. It denies that appellant has obtained the permission of the Pensacola and Louisville Railroad Company to construct or operate its lines of telegraph along its right of way, and that it has no such right. It admits the building of said line on said railway as alleged, but denies that it was built at great expense.

It denies that there was little inducement to the investment of capital in the construction, &c., of said line except the exclusive privilege granted by said act, but admits it may be true that the perpetual monopoly attempted to be engrafted on said charter did operate favorably in inducing the subscription of stock, if any was made, in said company. It denies that during the first years of its existence the said company derived no profits from their investment, but, on the contrary, avers that it is informed and believes the said line was remunerative from the beginning, and was expected to be so.

That it is not true, that at no period of time until the present, have any large telegraph companies of the country regarded the business of Pensacola of sufficient importance to induce them to extend their lines into said county of Escambia, but, on the contrary, it has long desired to make connection with Pensacola, the business being considerable, considering its population; and not desiring to interfere with or injure appellant by building an opposition line, has vainly endeavored for several years to purchase said Pensacola telegraph line from appellant with the view of connecting its numerous lines with Pensacola, but has failed to effect any such arrangement, appellant refusing to sell except at a most exorbitant and unreasonable price. It avers that other lines would have been long since constructed to

Pensacola, but for the pretended exclusive rights claimed by appellant, and the indisposition of parties to engage in litigation constantly threatened by appellant, and which threat is put in execution, as these proceedings testify.

It denies that appellant is entitled to the exclusive privilege claimed in Escambia county for a period of twenty-five years from the time of the passage of said act of incorporation, and, on the contrary, alleges that said charter purports to grant said exclusive privilege without limit of time, which it is advised is in conflict with the Constitution of Florida, which constitution, by section 2, article XIII, prohibits the granting of exclusive privileges for a greater period than twenty years; and it denies that appellant has any exclusive right and privilege at all, indeed, it has a legal existence.

It admits the passage of the act of February 14th, 1873, and the act amendatory thereof, of February 18th, 1874, but denies that the Legislature of Florida passed these acts in disregard of the rights of appellant under said charter of 1866, but, on the contrary, said acts were passed after most careful investigation as to the constitutional character of the pretended grant of exclusive privileges under said charter, and after consultation with and under the advice of the highest law officer of the government as to the validity of said exclusive grant of appellant.

It avers that it has become the assignee for a valuable consideration of all the rights, privileges, &c., of the Pensacola and Louisville Railroad Company acquired and held under the said acts, and also of the exclusive right to use and occupy its right of way in the county of Escambia, and in Alabama for the operation of its telegraph line.

It avers that under said acts and said assignment of the Pensacola and Louisville Railroad Company, as well as under an act of the Congress of the United States, approved 25th July, 1866, authorizing the construction and operation of telegraph lines on post-routes of the United States, it

has the right to construct, maintain, and operate a line of telegraph from Pensacola to the southern boundary of Alabama, along and on the right of way of the said Pensacola and Louisville Railroad Company to the point of intersecting in Alabama with the M. and M. Railroad, the same being a post-route of the United States, along which routes it is now engaged in constructing a line of telegraph.

It seems that this is the indentical line on which appellant has had its line located since the year 1866, and sets out wherein it differs.

It alleges that the line of appellant extends into Alabama, and denies that appellant has any chartered rights in that State, or any permission to occupy and use the right of way in Alabama of the Pensacola and Louisville Railroad Company.

It cannot admit or deny that the erection of its line of telegraph will render the charter of appellant valueless, and again denies that the franchises of said company was the sole inducement to the investment by its corporators, but that it is informed and believes that the line was originally constructed chiefly for the convenience of the corporators, who were merchants in Pensacola, requiring the use of such a line for the transaction of their own business; and that it appears by the bill that the necessary capital had been expended and the line of telegraph erected and in operation before the enactment of the charter of 1866.

It alleges, upon information and belief, that said line was constructed under a general act of incorporation in force in Florida at the time and prior to the charter of 1866, and requires proof that the company that constructed said line ever accepted said charter of 1866, or expended any money under it beyond what was realized out of the income and profits of the original company; also requires proof that appellant ever acquired, by proper conveyance, the said line of telegraph and its franchise from Pensacola to the Alabama line from the company that constructed it.

It alleges that the appellant has enjoyed a monopoly of the telegraph business in Escambia county from the year 1866, to the detriment of the general business and commerce of Pensacola and the people of Escambia county and elsewhere having business with Pensacola; that the charges of appellant have been exorbitant, &c., setting forth the same in detail; and then alleges that the additional charges on a line from Pensacola to New Orleans, New York, and other points over a line owned and operated by it, would be scarcely greater than from the end of its present line to these points.

It alleges that the income and profits from this monopoly are largely in excess of any just return for the capital employed, amounting, as it is advised, to over one hundred per centum annually upon the capital invested. (Folios 13 to 19.)

The cause coming on for hearing on the 8th day of March, 1875, the court denied the prayer of complainant for injunction, from which decree it appealed to this Court. (Folios 118 and 119.)

The court based its decree upon the ground that so much of the act of the Legislature of Florida as purported to give the exclusive right to complainant to erect and use lines of telegraph in the counties of Escambia and Santa Rosa was in conflict with the act of Congress, and therefore null and void. (Folio 122.)

Assignment of Errors.

I.

The court erred in dismissing the complainant's bill and refusing to grant the injunction therein prayed for, because, under its charter, it had the exclusive right to maintain and operate electric telegraph lines in the two counties of Santa Rosa and Escambia, State of Florida.

II.

It also erred in deciding that the acceptance by the appellee of the provisions of the act of Congress approved July 22, 1866, "Entitled an act to aid in the construction of telegraphic lines and to secure to the Government the use of the same for postal, military, and other purposes," gave to the appellee the right to exercise corporate rights and franchises in the State of Florida, and to erect and maintain electric telegraph lines in the counties of Santa Rosa and Escambia, notwithstanding the exclusive privileges granted to the appellant by its charter.

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 128.

PENSACOLA TELEGRAPH COMPANY, APPELLANT,

vs.

WESTERN UNION TELEGRAPH CO., APPELLEE.

Appeal from the Circuit Court for the Northern District of Florida.

BRIEF FOR APPELLANT.

CHAS. W. JONES, *For Appellant.*

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 128.

PENSACOLA TELEGRAPH COMPANY, APPELLANT,

vs.

WESTERN UNION TELEGRAPH CO., APPELLEE.

Appeal from the Circuit Court for the Northern District of Florida.

BRIEF FOR APPELLANT.

The bill in this case was filed for an injunction to restrain the defendant company from erecting and maintaining electric telegraph lines in the county of Escambia, State of Florida. The complainant claims the exclusive right to erect and maintain such lines by virtue of the grant contained in its charter.

By an act of the Legislature of the State of Florida, passed in the year of 1866, the corporators named in said act, and their successors, are constituted a body politic, under the style of the Pensacola Telegraph Company, and in such corporate capacity are invested with the *sole* and *exclusive* right of establishing and maintaining lines of electric telegraph in the counties of Escambia and Santa Rosa, State of Florida, either from different points within said counties, or connecting with lines coming into said counties, or

either of them, from other points in this or any other State.

It is further provided that the said corporation shall have power to locate and construct its lines of telegraph in said counties along and upon any public road or highway, or across any water or upon any railroad or private property for which permission shall first have been obtained of the proprietors thereof, by the erection and construction of all necessary fixtures, including, posts, piers, or abutments for sustaining the wires when stretched through the air, &c.

2. The Legislature which granted this charter being a legal body, can there be any doubt regarding its authority and power to make this grant? The power of the State Legislatures to grant exclusive privileges and franchises, except when prohibited or restricted by constitutional provisions, is universally conceded.

See Cooley on Constitutional Limitations, page 281.
West River Bridge Co. *vs.* Dix, 16 Vermont, 446.
6 Howard, 507.
Binghampton Bridge case, 3 Wallace, 51.
Shorter *vs.* Smith, 9 Ga., 529.
7 N. H., 35.
23 Pick., 360.
2 Gray, 9.
California Telegraph Co. *vs.* The Atlantic Telegraph Co., 22 California, 398.
1st Sneed, (Tenn.,) 115.
30 Barbour, 1,? 24.
9 Wheaton, 74.
9 Johns., 525.
4 Johns. Chan., 150.

3. The power of the Legislature of the State to grant exclusive franchises and privileges within its own jurisdiction cannot be denied, but we are led to inquire if such privi-

leges and franchises were granted to the complainant in this case.

The charter upon its face would seem to settle this question in the affirmative, for it declares that the complainant shall enjoy the sole and exclusive privilege of erecting and maintaining electric telegraph lines in the two counties named. The language is plain and its meaning unmistakable.

Was the privilege granted a franchise? One of the tests is to inquire whether the acts done under the charter could have been done without the aid of legislation. Here the corporators are created a body corporate, and are given the right to enter upon private lands, and erect poles and wires upon and along railroads and public highways. How would these corporators have avoided becoming trespassers and promoters of nuisances, had they done these acts without the warrant of public authority? Would they not have been liable to indictment, actions of trespass, and other legal liabilities for such intrusions upon private and public rights, if they had not the sanction of the Legislature? The privilege, therefore, of doing the things specified in this charter, did not belong to the corporators as natural persons; it could only have been derived from the State. The State granted to these corporators the sole and exclusive right to do and perform within the prescribed localities the things specified in the charter. This was all the right the State possessed over the subject granted. It could not have granted more than this, for it had no more to grant. It was impossible in the nature of things that the State could have retained any of the privileges granted after they were once disposed of, and the State had power to transfer them. The right to exist as a corporation, the power to build a bridge or a railroad over a particular stream or between certain points, may be granted more than once, for the State does not exhaust the power she possesses in such cases by one or more grants. But when she grants the ex-

clusive right to construct and operate a railway between designated localities, as she has to construct and maintain telegraph lines in this case, she divests herself of all the right she had to bestow over the subject, as much as if she had granted the title to a piece of land which she owned in the State. But it is claimed in this case that the grant contained in this charter being absolute and unlimited in its terms, was beyond the power of the Legislature to make; that the constitution of the State of Florida, which was in existence at the time the grant was made, limited the power of the Legislature, respecting exclusive corporate privileges, to grants for the period of twenty years; that as the Legislature in this case did not limit the grant to twenty years *expressly*, that it is void and of no effect, being contrary to the aforesaid constitution.

This argument hardly merits the compliment of a serious reply. The same style of reasoning would prove that a tenant for life or for years who should happen to convey his interest by a deed, couched in terms which would carry the whole estate in the land if the party owned it, would be void and of no effect, and the interest really possessed by him would remain unconveyed. The principle involved in this argument ought to be the same in judicial as in legislative proceedings, and yet we have very high authority for saying that the judgment of a court having jurisdiction in a particular case, which went beyond what the law empowered it to do, would be operative and valid to the extent only of its legal authority. This is shown in the judgment of this Court in the case of Bigelow *vs.* Forrest, (9 Wallace, 339,) where it was held that an absolute judgment of the district court under the Confiscation Act, which directed the sale of the fee simple estate of French Forest to be sold, only conveyed his life interest in the land, as the power of the court under the law extended only to his life interest.

This case, or at least the doctrine of it, was afterwards

affirmed in the case of Day *vs.* Micon, 18 Wall. The argument is that the court should construe this grant as being perpetual in order to hold it unconstitutional. If the principle contended for is rightly applied here, the very opposite of the conclusion drawn by the defendant's counsel must follow, and the grant in question—instead of being a perpetual monopoly and therefore void—must be held to be a charter for twenty years, and not open to constitutional objections. If it be insisted that a construction should be given to the charter in this case most favorable to the public, will, or can, it be insisted that the Court should construe this charter as a grant for all time to come, because it fixes no limit, contrary to the rule which requires the court never to infer a perpetual monopoly from doubtful language. This Court, in the case of Brewer *vs.* Blougher, (14 Peters, 178,) adopted the following rule of interpretation:

"To ascertain the meaning of the legislature from the words used in the statute, and the subject matter to which it relates, and *restrain* its operation within *narrower* limits than its import, if satisfied that the literal meaning would extend it to cases which the legislature never designed to include."

"The duty of the court," says Judge Cooley, "to uphold a statute when the conflict between it and the Constitution is not clear, and the implication which must always exist that no violation of the Constitution has been intended by the legislature, may require it in some cases where the meaning of the Constitution is not in doubt to lean in favor of such a construction of the statute as might not at first view seem most obvious and natural. For as a conflict between the statute and the Constitution is not to be implied, it would seem to follow where the meaning of the Constitution is clear, that the court, *if possible*, must give to the statute such a *construction as will enable it to have effect.*"

The supreme court of Illinois, following the spirit of this wise rule, says:

"Whenever an act of this Legislature can be so construed and applied as to avoid conflict with the Constitution, and give it the force of law, such construction will be adopted by the courts. Therefore, acts of the Legislature in terms retrospective, and which, literally interpretated, would invalidate and destroy vested rights, are upheld by giving them prospective operation only. So will acts of the legislature, having elements of limitation, and capable of being so applied and administered, *although* the words are broad enough to, and do, *literally read* strike at the right itself, be construed to limit and control the remedy; for, as such, they are valid, but as weapons, destructive of vested rights, they are void. *And such force only will be given to their* acts as *the Legislature* could impart to them."

New *vs.* Marsh, 19 Illinois, 384.

The supreme court of New Hampshire, in a similar case, says:

"It is the duty of the court so to construe every act of the Legislature as to make it consistent, if it be possible, with the provisions of the limitation, without stopping to inquire what construction might be warranted by the natural import of the language used."

Dow *vs.* Norris, 4 N. H., 17.

The supreme court of New York has used equally pointed language on this subject, it says: "A legislative act is not "to be declared void upon a mere conflict of interpretation "between the legislative and judicial power."

Before proceeding to annul, by judicial sentence, what has been enacted by the law-making power, it should clearly appear that the act *cannot* be supported by any reasonable intendment or allowable presumption.

People *vs.* Supervisors of Orange co., 17 N. Y., 241.

Clarke *vs.* Rochester, 24 Barbour, 471.

This Court has said:

"To justify a court in declaring an act of the Legislature

unconstitutional the incompatibility must be *clear*, not *speculative* or *argumentative*."

Livingston *vs.* Moore, 7 Peters, 663.
Falconer *vs.* Campbell, 2 McLean, 195.

Can it be said that the incompatibility supposed to exist in this case is more than argumentative? In order to destroy the statute under consideration it must be shown that the exclusive right which it confers is perpetual. The act does not say this in terms; it fixes no limitation expressly as to the *duration* of the privilege granted; and the argument is, that the very indefiniteness of the grant in respect to *time* warrants the conclusion that it was intended to be perpetual. If the charter was intended to be limited only to twenty years, the Legislature would have fixed the limitation; therefore, the failure to fix the limitation is proof that it was intended to be unlimited, and, being unlimited, it is unconstitutional. Is this not deducing the incompatibility spoken of by the Supreme Court, by process of argumentation? Is this the clear, direct, and positive incompatibility which the court decided must exist before an act of the Legislature is declared void?

Vattel in his 16th Rule of Interpretation tells us:

"The interpretation which renders a treaty or statute null and void cannot be admitted; it is an absurdity to suppose that after it is reduced to terms it means nothing. It ought to be interpreted in such a manner as that it may have effect and not to be found vain and illusive."

The very most that can be insisted on by the defendant upon this point is the law as laid down by this Court in the case of Moran *vs.* Commissioners, 2 Black, 722:

"That grants containing special privileges are to be strictly construed, and whatever is not given in unequivocal terms is withheld."

But the Court in that case says "that this principle must

be applied with reference to the subject matter as a whole, *and not so as to defeat the intent* of the Legislature."

And it was held: "Where the purpose of a franchise is the performance of a public act, the grant must be interpreted as to enable the act to be done. Hence, a proviso in the charter of a bridge company that the erection of piers, necessarily contemplated by the charter, should not injure the navigation, should be construed reasonably, though strictly in favor of the State, for a literal construction placed on this proviso would prevent the erection of the bridge and defeat the grant."

Monongahela Bridge Co. *vs.* Kirke, 46 Pa. State Rep., 112.

And in the recent important case of the Binghampton Bridge Co., 3 Wallace, 51, this Court, in construing a charter which granted special exclusive privileges, in the following words: "That it shall not be lawful for any person or persons to erect a bridge within a distance of two miles," held that the statute meant "not only that no person or association of persons shall erect such bridge without legislative authority, but that the Legislature itself will not make it lawful for any person or association of persons to do so by giving them authority."

Here was a case where the court could have stood upon the literal terms of the grant, and have held that the words used in the charter were only intended to protect the grantees or corporators from the unauthorized competition of persons or association of persons within the limit of two miles mentioned in the act. Why was not the strict construction which would have swept away the exclusive right adopted in that case? The answer is obvious. It could not have been adopted without violating that more imperative if not superior rule of construction which requires, above all things, that effect shall be given to the intention of the Legislature.

Can any one doubt, after reading the act of incorporation under consideration, that the Legislature of Florida intended to grant the exclusive right mentioned in the act to the complainant. The presumption is that the legislature did not intend to violate the constitution, and inasmuch as the constitution prescribed the limit of time within which exclusive privileges should continue valid, it is not unreasonable to conclude that the limit of time contained in the constitution was the one adopted by the legislature. Why will not the rule of construction so familiar to all which requires that all laws in *pari materia* be construed together, settle this question? Here is the law giving the power to the legislature to grant exclusive franchises for a term of twenty years. Here is a charter showing that the legislature exerted this power, and has granted exclusive rights to the complainant without specifying the time, in express words, during which these rights shall continue. It is a fundamental rule of construction that what is implied in a statute is to be taken the same as what is expressed; or, in the succinct language of judicial authority, a thing within the *intention* is within the statute though not within the letter; and a thing within the letter is not within the statute, unless within the intention.

15 John, 380.
3 Cowan, 89.
1 Black S. C., 61.
1 Wallace, 221.

The legislature of the State, with the limitation of the constitution before it—the Governor a man of the first judicial abilities in the country (Judge Marvin)—pass and approve this law, for no purpose but to see it go through the simple forms of legislation, to violate the constitution, and to delude the corporators named in it—the first citizens of the State—into the idea that they had secured a valuable privilege, and when they invested their capital under it to

have it declared void in its only valuable part. A very learned writer, Mr. Dwarris, in speaking of the rules which should govern the construction of contracts, (and the same are applicable to statutes,) says:

"If the full and entire intention does not appear from the words of the contract, and if the contract can be interpreted by any custom or usage of the place where it is made, that course is to be adopted. Thus, if a tenant by custom is to have the outgoing crop, he will be entitled to it, although nothing is said in the lease on the subject. If the lease be silent as to the time of the tenant's quitting the premises, the custom of the country will decide it. It is in order to discover the intention, and then, upon the practical notion that all writings tacitly refer to the existing circumstances under which they are made, that courts of law admit evidence of particular customs and usages in aid of the interpretation of written instruments, whether ancient or modern, whenever a knowledge of such customs is necessary to a right understanding of the instrument. The law, it is said will allow to the reader of any instrument the same light which the writer enjoyed."

Potter's Dwarris on Statutes, p. 177.

We ask, therefore, that this act be read in the light and in connection with the constitution in existence when it was adopted or approved, if its force and validity is to be tested by that constitution and the object the Legislature had in view by its passage, and we challenge the most critical scrutiny under any rule of construction, to discover any sound objection to its constitutionality.

We have only thus far considered the act of incorporation set up by the complainant as a substantive act of the provisional government, and in connection with the provisional constitution of the State which was adopted in 1865, and we have been treating the subject in the very same manner as we would have done if the constitution of 1865 was still the fundamental law of the State, and the court was in the position, which all courts must be in before they

can hold an act of the Legislature unconstitutional—compelled by necessity to decide between two operative conflicting rules or laws, one of which is fundamental, or superior to the other, and which the court is bound by its oath and responsibility to enforce.

It need not be argued, I suppose, that the provisional constitution of Florida, adopted by the people, in 1865, is no longer an existing law; it has long since passed away, and is now only part of the history of the State. The new constitution has entirely superceded that of 1865, and the charter under consideration has been left alone by its organic parent, and exists to-day under a new and different constitution from that to whose power and authority it owes its existence. Whence, therefore, it may be asked, does the conflict arise which the court is called upon to settle? There is *no* conflict whatever between the constitution of to-day and the statute under consideration. There is no restriction whatever in the present constitution of Florida upon the power of the Legislature to grant exclusive privileges. There is not a single sentence in the present organic law, no policy established by it with which this charter is in conflict, even upon the supposition that it was intended to live forever. The court is asked then to exert not what we conceive to be an appropriate judicial power, to decide between two living operative and apparently conflicting laws, but whether a living law in force and operation—a *contract* in *fact* made by the authority of the State—is in conformity with a *dead constitution*. It has ever been the opinion of our wisest judges that the duty of passing upon the constitutionality of legislative acts was always a delicate one and ought never arise except in cases of necessity. It is clear, to every one acquainted with our systems of Government, that neither our national or State courts derive their power of setting aside acts of the co-ordinate departments of Government from any superior or higher authority over those departments with which they are in-

vested. It is a fixed maxim in our jurisprudence that each of the three great departments of government are within their proper spheres the equals of each other in dignity, importance and power.

When a court decides an act of the legislature unconstitutional and void it does not—it cannot—do so because it possesses superior revisory power over the law making department; but because the court in the administration of the law is bound by its oath and duty to give effect to the Constitution, which is superior and higher than all the departments of Government, whenever it is found in conflict with acts of ordinary legislation. A necessity forces it, when a case of conflict arises, to decide whether the law or the Constitution shall prevail. The power, therefore, does not arise from superiority, but from necessity, and can only exist under a constitutional government. It will be apparent from this view of the power that occasion for its exercise can only arise when some act of the legislative department is sought to be enforced which is in conflict with the *existing Constitution*, for the reason that the obligation and duty which the court owes to such *existing Constitution* is all that gives it power or authority to set aside an act of the legislature.

Judge Cooley in his work on Constitutional Limitations, p. 150, says:

"The courts may declare legislative enactments in some cases unconstitutional, but not because the judicial power is superior in degree or dignity to the legislative. Being required to declare what the law is in the cases which come before them, they *must enforce* the Constitution as the *paramount law* whenever a legislative act comes in conflict with it.

"But the courts sit not to review or revise legislative action, but to enforce the legislative will; and it is only when they find that the legislature has failed to keep within its constitutional limits that they are at liberty to disregard its action; and in doing so they only do what every private citizen may do in regard to the action of the courts when

the judge assumes to act and renders judgment without jurisdiction. If an act of the legislature is held void, it is not because the judges have any control over the legislative power, but because the act is forbidden by the constitution, and because the will of *the* people, which is therein declared, is *paramount* to that of their representatives expressed in any law."

2 Bay, 61.

Apply the principle so fully stated in these extracts to this case, and how can the Court undertake to test the constitutionality of this charter by the limitations contained in the constitution of 1865, which was completely annulled and superceded by the present organic law in the year of 1868. There is not any law now in existence with which this charter is in conflict, unless it be that relied upon by the defendant, and enacted during the year 1874, which cannot avail it if the propositions we have discussed have been maintained. We have thus far labored to prove that under the best rules of construction applicable to the subject, there is no conflict between the complainant's charter and the constitution of 1865, and that if the charter must be tested by that standard it is not open to constitutional objections, as it must be held that the limitation of the constitution was incorporated into the law.

2. That inasmuch as the constitution of 1865 is no longer operative or in existence, and the charter of the complainant is yet in force, there can be no conflict between the two to justify the court in deciding whether *or not* the former was violated by the latter, or in giving effect to it as the paramount law.

We shall now proceed to consider the complainant's act of incorporation in the light and under the provisions of the present constitution of the State, which went into operation in the year 1868, and which is the only fundamental law that has existed there since that time.

The court will take judicial notice of all those great events

in our recent history which led to the overthrow and re-establishment of State governments in the States of the South, which are in harmony with the Constitution and laws of the United States. It is now very generally admitted that the effect of the rebellion in those States was the overthrow of their respective governments, which existed in subordination to the Government of the United States. The States in their corporate character were not destroyed, their connection with the other States was for a time interrupted, and their Federal relations suspended. The laws and constitution which existed before the revolution, remained in a state of suspended validity until they were annulled or revived by the action of the people in their several conventions.

The constitutional convention which formed the present constitution of Florida, and which met under the authority of the laws of the United States, recognizing the great fundamental change which had taken place in the State government, and the chaos and confusion likely to result from the establishment of a new constitution, based upon the principles of universal freedom, and which were extended to the whole slave population of the State—adopted an ordinance which has prevented those consequences, and given validity to a large number of enactments of the former government, which without it would have ceased to exist as laws, upon the adoption of the new constitution. The Court will perceive, upon a close examination of this ordinance, which is known as Article Fifteen, that it intended to continue in force and operation all acts and resolutions of the General Assembly of Florida, which were passed before the act of secession of January 11, 1861, and which were not in conflict with the new constitution. This end was accomplished by the 2d section of this ordinance, which is as follows:

"That all acts and resolutions of the *General Assembly*, and all official acts of the civil officers of the State, not inconsisten

with the provisions of the Constitution and statutes of the United States, or with this constitution, or with any ordinance or resolution adopted by this convention * * * are in force, and shall be considered and esteemed as laws of the State until such acts or resolutions shall be repealed by the Legislature of the State or this convention."

This ordinance very plainly continued in operation the great body of the laws of the State, and placed them under the control of the new Legislature the same as they had been under that of the old government.

But the following section of the same ordinance had a different object in view, it reads as follows:

"SEC. 3. All laws of the State passed by the *so-called General Assembly* since the 10th day of January, 1861, (the date of secession,) not conflicting with the word or spirit of the Constitution and laws of the United States, or with this constitution, *shall be valid.*"

The convention designated the acts and resolutions of the old government up to January, 1861, as the acts and resolutions of the *General Assembly of the State*, and the laws which were passed by the Legislature after secession took place and the acts of the provisional government inaugurated by President Johnson, as laws passed by the *so-called General Assembly* since the 10th of January, 1861.

The charter now under consideration was passed by the Florida Assembly since the 10th day of January, 1861, and if there was ever any ground to doubt its validity as a constitutional enactment it has been entirely removed by the third section of Article 15 of the present constitution, which we have quoted.

It is expressly declared that all laws passed by the *so-called General Assembly* since the 10th of January, 1861, not *conflicting* with the *present constitution*, or that of the laws and Constitution of the United States, *shall be valid*. This organic law prescribes no test whatever of validity for any

law falling within it, except that it shall not violate the present constitution and that of the United States or its laws.

It cannot be denied that it was within the power of the Constitutional Convention to make this or any other law of the provisional government valid and operative, even though they were not so before. As we before stated there is not a word in the present constitution or that of the United States in conflict with this charter. Is it not valid, therefore, by force of the very terms of the present constitution? It cannot be contended that the charter does not come within the description contained in section 3 of Article 15, for the supreme court of Florida has decided that the same language used in Article 16 of the same constitution embraced a judgment rendered in 1866 by a court sitting under authority derived from the same provisional government.

The 26th section of Art. 16, declares:

"All judgments and decrees rendered in any of the courts of this State *since the 10th day of January*, 1861, upon all deeds or bills of sale * * * based upon the sale or purchase of slaves, are hereby declared set aside, and the plea of failure of consideration shall be held in all such actions as a defense.

Gregory *vs.* Nealy, 13 Florida.

The Supreme Court decided that the words *all judgments rendered since the 10th of January*, 1861, embraced a judgment rendered by a court sitting under the authority of the provisional government in the year 1866. Why, therefore, will not an act of the legislature passed in 1866 fall within the language quoted from Art. 15, as follows:

"All laws passed by the so-called Assembly, since the 10th of January, 1861."

This concludes our argument upon the third point of the complainant's case, viz.: That the act of incorporation passed by the General Assembly of Florida, Dec. 6, 1866,

is valid and operative, by the express terms of Sec. 3, Art. 15, of the present constitution.

We shall now consider the claim of the defendant to the right which it asserts of participating in the franchises and privileges of the complainant, and of contesting the complainant's right to the exclusive franchise set up in the bill. We shall insist that the defendant before it can in any way question the complainant's rights under its charter, especially upon the ground that it is unconstitutional, must show that it has some apparent legal authority as a foreign corporation to exercise the franchises it is about to do in the State of Florida. It is well settled by the authorities that a "court will not listen to an objection to the constitutionality of an act by a party whose rights it does not affect and who has no interest in defeating it. *Prima facia* nothing will appear to show that the act is not valid; it is voidable, not void, and can be taken advantage of *only* by those who have a right to question its validity, and not by strangers."

Cooley Cons. Lim., p. 164.

The defendant in this case cannot proceed with the erection of its lines of telegraph in the county of Escambia, and deny the complainant's right to the privileges claimed in the bill and the relief sought, without showing some warrant or authority from the State of Florida. If it possesses no charter or grant from the State to erect a line of telegraph in *said county*, then the charter of the complainant must be accepted without question, and no inquiry into its constitutionality can be made. But defendant insists that it has been empowered by the State of Florida to erect lines of telegraph in said county, and it relies upon an act passed by the Legislature of Florida, February 3, 1874. The first section of that act, which is all that is material to be considered here, is as follows:

"That any telegraph company chartered or incorporated

"by *this* or *any* other State, shall have the right to con-
"struct, maintain and operate, lines of telegraph along any
"of the railroads or other public highways in *the State of*
"*Florida.*" * * *

We have already referred to the language of the complainant's charter, which grants the sole and exclusive right to do in the two counties of Escambia and Santa Rosa what is above authorized to be done in the State. Can it be claimed under the well settled rules of construction, that the act of 1874 repeals the act of 1866—supposing for argument's sake that it could be repealed?

The supreme court of Michigan in the case of Crane *vs.* Rider, (22 Mich., 322,) *held*, where there are two acts, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act, the *special act must* be taken to constitute an exception to the general act, as the legislature are not to be presumed to have intended a conflict. The same view of the law was announced by the supreme court of New Jersey in the case of the State *vs.* Mills, 34 N. J. L., 1870, p. 177; and the supreme court of Ohio in the case of Fostick *vs.* Perrysburg, 14 O., N. S., p. 474, declared that it is an established rule of construction applicable to statutes, that a subsequent statute, treating a subject in general terms, and not *expressly contradicting* the provisions of a *prior* act, shall not be considered as intended to affect more particular provisions of the prior act, unless it be absolutely necessary to do so in order to give its words *any meaning.* Now, it is not necessary in order to give the words of this act any meaning to hold that it includes the counties of Escambia and Santa Rosa. There are 37 counties in Florida within and over which the act of 1874 can operate, and where the defendant may construct and maintain as many telegraph lines as it pleases. The act of 1866 is not re-

ferred to in the subsequent law, a general repealing clause cannot, in this case, have the effect of repealing the special statute.

If the objections made to the charter of the complainant be found untenable, it can require but little argument to prove that it is the duty of the Court to protect, by injunction, the franchises of complainant. Since the decision of the celebrated Dartmouth College case, in 1819, it has never been seriously doubted in the courts of this country that an act of incorporation creating and investing a private corporation with special privileges, is a contract between the State and the corporation which it is beyond the power of the Legislature to impair or modify without the consent of the corporation, and entitled to the protection and security of the Constitution of the United States.

Dartmouth College *vs.* Woodward, 4 Whea., 518.
The Bank of Ohio *vs.* Knoop, 16 How., 369.
Dodge *vs.* Woolsey, 18 How., 331.
Jefferson Branch Bank *vs.* Skelly, 1 Black, 436.
Franklin Branch Bank *vs.* Ohio, 1 Black, 436.
The Binghampton Bridge case, 3 Wallace, 51.

Mr. Webster, in the Dartmouth College case, says:

"If lands or money had been granted to him and his associates, for the same purposes, such grants could not be "rescinded. And is there any difference, in *legal contemplation*, between a grant of corporate franchise and a grant "of tangible property? No such difference is recognized "in any decided case, nor does it exist in the common apprehension of mankind."

It has frequently been decided that a legislative grant of land will carry the title of the State as effectually as the deed of a private person will carry his estate.

Adopting the law as stated by Mr. Webster, suppose the Legislature of Florida, instead of the power to grant ex-

clusive franchises for twenty years, had been invested with authority to make grants of land for the same period, and she had granted the title to a particular portion of her domain in absolute terms and without any limitation as to time—could a court say in that case (and it is precisely analogous to this) that the grant was void? And suppose the State after making the first grant made another, conveying *all* her domain in the *State*, would the second grant under any rule of construction, be held to embrace the land contained in the first?

The court will bear in mind that the power to grant exclusive franchises belongs to the general mass of legislative powers residing in every State government, and that in this case the limitation contained in the constitution of Florida of 1865 was in the shape of a proviso or exception.

It is a principle in pleading that in making out a title under an instrument containing an exception or proviso the exception or proviso need not be noticed.

Where a general power is given, and an exception in the shape of a limitation is also embodied in the instrument, it is clear that when the general power is exercised it will be taken to be subject to the exception stated in the instrument which confers it, although no negative words be employed. Take the following language for an example:

"The legislature shall have power to grant exclusive privileges and franchises to private corporations: *Provided, No grant* of exclusive privileges, &c., *shall be for a larger period than twenty years.*"

The principal thing authorized to be done in this grant is to confer exclusive privileges and franchises to private corporations. The effect and limitations of the grant are fixed by the *constitution.* It is only necessary in a case of this kind for the Legislature to fix the time when it intends the limitations to be *less* than *twenty years.* When it grants an exclusive privilege generally without limitation as to time,

the constitution steps in and fixes the limitation and gives effect to the grant.

The appellee justifies itself under the act of Congress of 24th July, 1866, "to aid in the construction of telegraph lines," &c.

The question is not whether Congress can or cannot legislate on the subject of electric telegraphs under the power to regulate commerce, (clause 4, sec. 8, article 1, of the Constitution of United States,) or to establish post offices and post roads, (clause 8, sec. 8, article 1,) or the extent to which that legislation may be pressed; but whether it has so legislated as to authorize the appellee to invade the exclusive franchise granted to the plaintiffs by the State of Florida.

That a corporation has no existence or rights beyond the territory of the State by which it is created, except by the comity or enabling acts of other States, is a principle of American common law.

The Bank of Augusta *vs.* Earle, 13 Peters, 558.
Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286.
Paul *vs.* Virginia, 8 Wall., 168.
Liverpool In. Co. *vs.* Massachusetts, 10 Ibid, 566.
Railroad Co. *vs.* Harris, Ibid, 65.

The appellee's construction of the act of Congress of 1866 would, in effect, abolish that principle so far as it relates to electric telegraph corporations.

To work such a change in the common law the language of the act should be plain and unequivocal.

Cooley on Con. Lim., 60.

But whilst such an effect is proposed to be given to the act, the act itself in terms refers to such corporations and none others as are organized under the laws of the States.

What are corporations organized under the laws of the States?

Are they corporations which can do what the creators

cannot authorize them to do, or the States in which they propose to operate refuse to permit them to do?

Or are they corporations with the ordinary corporate being, powers, and limitations?

Every statute is presumed to be framed with reference to the common law.

When, therefore, Congress says that a corporation "organized" under the laws of one State may do an act or enjoy a privilege, which it is in the power of Congress to authorize or bestow, in another State, it must be understood that the act may be done and the privilege enjoyed, with the permission of the latter State, and not that any corporate capacity to do the act or enjoy the privilege is bestowed by Congress.

Thus construed, the act of 1866 gives the right of way over the public domain, along post and military roads of the United States, stone and timber, and the right of preemption for stations to all electric telegraph companies, which have the potentiality to receive such benefits, either under the laws of the States creating them, or in consequence of the enabling acts of other States.

Under the appellee's construction it is assumed that the only possible obstacle to a telegraph corporation's operating in any State is in the matter of the right of way for its lines, when indeed the primary obstacle is the right to be a corporation and to exercise any right as such.

The minor obstacle Congress removes to the extent of its power. The primary one it does not even touch.

In the ultimate analysis of the appellee's case we find that from the grant by Congress of a proprietary incident of telegraph corporations—the right of way—there is deduced corporate life and capacity which the State of New York could not bestow and which the State of Florida could not constitutionally impart. But the true logic is, that the incident follows the principal; and if the princi-

pal has no capacity to receive or enjoy, the incident cannot attach to it.

The reasoning by which the appellee must reach its construction of the act of 1866 will inevitably lead to the conclusion that the various acts of Congress granting the right of way over the public domain in the several States to corporations extend, *proprio vigore*, the corporate existence and corporate franchises of those corporations into all the States comprehended in the grant.

Whether Congress, under the power to regulate commerce, is authorized to interfere with the right of a State to admit or refuse admission within its territory to railroad and telegraph corporations is a question which Congress has never seen fit to raise by any express legislation.

If this be so, is it wise or proper for the courts to raise such questions by astute construction or remote implication?

When its legislation is confined to mere proprietary incidents, which smooth the way for the exercise of corporate life and privileges by the States, why assume there is more involved than is expressed, according to the accepted canons of construction?

The clause "over and along any of the military or post roads of the United States" militate with the foregoing construction.

By the second section, act 7th July, 1838, all railroads are declared post routes, as canals had been by the 42d section of act of July 2d, 1836, and as other waters on which the mail was transported had been, section 19 of the act of 3d March, 1825.

1 Brightley's Dig., 766–7.

The only effect of declaring a river, canal, road, turnpike, or railroad a post route was to guard the postal service of the United States from frauds.

Pennsylvania *vs.* Wheeling and Belmont Bridge Co., 18 Howard, 421, at pages 431–441.

"By these acts," remarks Judge Drummond, "I understand nothing more than the mails may be transported over railroads as over ordinary public highways, with all those securities and safe guards thrown around the transit of the mails by various congressional enactments."

The Atlantic and Pacific Telegraph Co. *vs.* The Chicago, Rock Island and Pacific Railroad Co.

Using a road as a post route, or declaring it to be such, gives the United States no propriety interest in it.

Dukey *vs.* Maysville and Lexington Turnpike Road, 7 Dana, 113.

Having no proprietary interest, the United States can bestow no right of way; and, therefore, such a grant cannot be presumed to be within the intention of the act of Congress of 1866.

The absence of any provision for compensation excludes the construction that the act involves the exercise of the right of eminent domain; for in the absence of such a provision the act would be void.

Cooley Con. Lim., 560–61.

The only conceivable purpose of the provision of the act in reference to post routes was to give the legal sanction of Congress to a mode of communicating thought. which resembles letter writing sufficiently to fall within the spirit at least of § 9, of act 3d March, 1845.

Brightley's Dig., 767.

The act is a covert, but none the less explicit, statutory declaration of the consistency of electric telegraphs with the postal service of the United States.

When military roads are established by the United States, the rights which will be derived under this act in such roads will depend upon the proprietary interest of the United States in the soil over which they run.

The only statutory provision of Congress relating to the establishment of military roads is contained in the 1st section of the act of 30th April, 1824, (1 Brightley's Dig., 817,) which provides for the selection and survey of such roads and post routes.

Whether we regard the act of Congress of 1866 as a whole, or analyze its separate features, the mind searches in vain for a pretext for the suggestion that it was intended either to abridge or enlarge the powers of State corporations engaged in the business of electric telegraphy derived from their charters.

CHAS. W. JONES,
For Appellant.

SUPREME COURT OF THE UNITED STATES.

October Term, 1877.

THE PENSACOLA TELEGRAPH COMPANY,

Appellant,

vs.

THE WESTERN UNION TELEGRAPH CO.,

Respondent.

No. 128.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR RESPONDENT.

PERRY BELMONT,
GROSVENOR PORTER LOWREY.
Of Counsel.

Supreme Court of the United States.

THE PENSACOLA TELEGRAPH COMPANY,
Appellant,

agst.

THE WESTERN UNION TELEGRAPH COMPANY,
Respondent.

Points in behalf of Respondent.

This is an appeal from a judgment of the Circuit Court of the United States, in and for the Northern District of Florida, refusing to restrain the respondents from building and operating certain telegraph lines.

The bill prayed for an injunction restraining the respondents from establishing or carrying on the business of telegraphing in the counties of Escambia and Santa Rosa, on the ground that by an act of the Legislature of Florida the exclusive right had been given to the complainant to erect and use lines of telegraph in these counties. The judgment appealed from refused this injunction, upon the ground that that statute was in conflict with the Act of Congress, passed July 24, 1866, entitled "An Act to aid in the construction of telegraph lines, and to secure to the government the use of the same for postal, military and other purposes" (14 U. S. Stats. at Large, 221). (See Appendix A.)

In determining this appeal, the Court is called upon again, to consider Art. 1, §8 of the Constitution; the Act of Congress of July, 1866, above referred to; Acts of the Legislature of Florida, of December, 1866, and February, 18th, 1874, referred to in the answer. (See Appendix B.)

The following propositions are asserted, on behalf of the respondent, as pertinent to the issue in this case:

1st. Telegraphing, as practiced by the respondent, is a part of that intercourse which constitutes commerce.

2d. Restrictions upon the free right to erect and maintain telegraph lines operate to regulate that intercourse.

3d. Such restrictions when imposed by State authority are void, as contravening the Constitution of the United States.

4th. The Act of the Legislature of Florida relied on by the appellant (fol. 10), not only trespasses upon a domain of power belonging to Congress, but assumes to make a regulation forbidding what Congress has permitted and authorized.

TELEGRAPHING AS A METHOD OF COMMERCE OR INTERCOURSE.

The electric telegraph is a substitute for personal speech and intercourse. By it, the vocal tones, and gestures, which, under the name of language have, among men, fixed interpretations indicative of ideas, are replaced by certain other signs and signals having the same conventional meaning. A word as the sign of an idea may be written on paper, pronounced by the voice or made to reverberate through the telegraphic sounder, and produces in each case upon the mind of the person addressed the same effect. These signs are therefore precise equivalents. Being artificial and arbi-

trary they have no character or purpose except as vehicles or means for containing, conveying or expressing intelligence. If *intercourse* or the conveyance of intelligence by means of human language in any of its forms is a protected part of the *commerce* by which it is employed, and to which it is indispensible, then it must be protected in all. It is "intercourse" to which the Constitution guarantees freedom from State restrictions, and not any particular form of that intercourse.

Not only has the communication by electric signals come to be the most useful of the agencies by which traffic is fostered, but it has revolutionized the commerce of the world. No considerable transaction now takes place between foreign places or between any of the principal towns or cities of these States, without the use of the telegraph. Correspondence maintained through its means alone has been frequently held to constitute the complete basis for legal contracts and obligations, and to result in completed acts of commerce. This was the fact in Utley *vs.* Donaldson, 94 U. S. Rep., 29. A recent invention known as the telephone has the capacity to counterfeit harmonic sounds and cause them to be heard in that counterfeited or reproduced form at long distances from the place at which they originate. Thus the tones of the human voice are counterfeited and apparently reproduced, so that by the intervening means of a telegraphic wire and the requisite appliances personal intercourse by the voice is possible between persons placed respectively in Savannah and Pensacola, Florida [within the prescribed district].

This intercourse, which the Constitution would certainly protect from any abridgment of its freedom when conducted in the ancient and ordinary forms of speech or writing, is what the Legislature of Florida designed, by the act in question, to regulate within its borders, to the extent of forbidding it absolutely unless conducted through the agency of the complainant. It

would not think it constitutional to restrain all persons except one within its borders from selling the products of the State to foreigners; nor would it think to forbid free oral or written communications by all persons, touching the subject or occasions of commerce, whether made directly or by any established means for such communications; but it seems to be thought competent to regulate this special sort of communication. The relations of the telegraph to State lines need not be remarked upon. It is essentially the nature of the telegraphic system that it obliterates distances and unites widely separated communities in the same conveniences as those which are near to each other. A telegraph line, like that of the complainant, whose communications are limited to two wild counties in the State of Florida, is powerless to maintain or aid those communications and that intercourse which the interests of the Government as well as of inter-State and international commerce demand. It is possible to conceive of circumstances under which the control within a State of all means of communication by telegraph between the seat of Federal government and one of its important military or naval stations would entirely defeat the purposes expressed in the title to the act of Congress in question, to wit, to secure to the Government the use of telegraph lines "for postal, military, and other purposes." That "intelligence" which was included by Judge Johnson in his opinion in Gibbons vs. Ogden as one of the incidents of commerce, but which in the broader generic treatment of Chief Justice Marshall would appear to be one of its elements, must be able freely to seek all means of communication in order to be of avail for commercial, for social, or for governmental purposes. To restrict the number of persons who may serve as intermediate agents in interpreting and facilitating the transmission of telegraphic signals, is to regulate directly the free transmission of intelligence; and to

obstruct or control that, is *pro tanto* to regulate an essential element of modern commerce. Gibbons v. Ogden, 9 Wh., 229.

The character of the commercial connections and relations of the Western Union Telegraph Company's lines in different States, and with foreign countries, is shown in the testimony of Mr. Orton, beginning at folio 21. By that evidence it also appears that there was not at that time any direct telegraph communication with the city of Pensacola by which the officers of the Government at Washington could communicate with the army and navy or other officials of the Government at Pensacola, and that when the line of the defendant is completed to Pensacola, communications to that point from such officials at Washington will be made, subject to the Act of Congress aforesaid, and the obligations resting upon the Western Union Company by reason of its acceptance of that Act. It also appears that the Legislature of the State of Florida did, on the 2d day of January, 1866, and prior to the passage of the Act conferring the pretended exclusive privileges of the complainant, pass an Act to encourage telegraphic communication between the Island of Cuba and the State of Florida, and other West India islands, by which Act the privilege and power to erect, construct, maintain and operate telegraph lines through the State of Florida is conferred upon the said International Ocean Telegraph Company, their associates and assigns. That the cables of that company are now laid, connecting the State of Florida and the Island of Cuba aforesaid. Thus, there appears to be an extensive and united system of telegraphic communication extending over the whole country, out of which it was attempted to carve the counties of Escambia and Santa Rosa with the important naval station therein contained. A more flagrant interference with free communication between those excepted counties and the rest of

the world, can scarcely be conceived. A comparison of the names and residences of stockholders given at fol. 47, with those of the corporators given at fol. 10, would seem to indicate that this exclusive privilege was given to a little coterie of Pensacola merchants, who were thus permitted to stand outside that important commercial city and lay a controlling hand on all commercial intelligence affecting their own or others' interests at that place.

THE APPELLANT'S CHARTER CONSIDERED AS A REGULATION OF COMMERCE.

Considered in its effect as a regulation, this legislative act is obnoxious to every objection made to the legislative acts brought in question in Gibbons *v.* Ogden. The position sought to be maintained by the respondent Ogden in that case, appears identical with the claim of the appellant in this case. There, an exclusive privilege had been conferred by the State Legislature upon certain persons to operate the means of transit and conveyance known as steam navigation, within the territorial limits of the State of New York; in short an exclusive privilege to transport goods and persons by steam was created. In the Court below, that monopoly was sustained, as being a proper exercise of certain of the reserved powers of State Governments. This Court reversed that judgment, upon the ground that such an exclusive privilege was repugnant to the Constitution, and void. In this case the attempt is to sustain a precisely similar monopoly in the use within certain territorial limits of those means for transmitting intelligence which are familiarly known under the term Telegraphy; in short an exclusive privilege to transmit intelligence by electric telegraphy is created. The character of the legislation, and the purpose sought to be effected in the two cases, are not distinguishable upon principle. In the steam navigation case it appeared that Congress had regulated the same sub-

ject by the Coasting Act, although the State legislation was held void absolutely, as trenching upon a field in which there is no concurrent jurisdiction between the Federal and State Legislatures. It is unnecessary to consider that familiar topic in this case, since, if the subject-matter of telegraphing is within the regulating power of Congress, it has clearly exercised its power, and has decreed the freedom of telegraphing in all the certain places described in the Act of July 24th, 1866.

It would seem clearly to appear, therefore, (1) that telegraphing is within the general class of human affairs contemplated by the Constitution under the name of commerce; (2) that it has been acted upon and regulated by Congress; (3) that the effect of the State legislation in question is to establish a repugnant scheme of regulation.

So far as any just rule for construing the powers of Congress is to be deduced from the continued exercise of any given power, we are sustained by the practice of Congress from the earlier history of telegraphy to the present time, in taking jurisdiction of the subject in its relation to foreign commerce.

It treated telegraphy as a matter of general concern, by the granting of sums of money for experimenting. (Act of March 3, 1843; 5 *Id.*, 19.)

An Act to test the practibility of establishing a system of electro-magnetic telegraphs in the United States. (5 Stats. at Large, p. 618).

For defraying the expenses of the magnetic telegraph from the city of Washington to Baltimore for the current year, ending on the first day of February next; the said sum to be disbursed under the direction and superintendence of the Postmaster General, eight thousand dollars (Ib., p. 757).

That department of the Government most frequently called upon to construe these powers has de-

clared itself in favor of considering telegraphing as a branch of commerce; and that it is within Congressional control (14 Opinions, p. 64; 12 *Id.*, 337.) This Court foresaw, in Munn *v.* Illinois, (94 U. S. Rep., 135,) the precise case arising here, of real interferrence with inter State commerce, under the pretence of regulating a matter of purely domestic concern, *i.e.*, the granting of domestic franchises to be enjoyed wholly within the border of the State. We have here an attempted act of control over a business which is necessarily carried on always within the lines of some State; and it will doubtless be claimed [perhaps under the authority of the reasoning in Munn *v.* Illinois], that every State has an undisputed reserved power to regulate *property* situated within its territory. But in that case the Court expressly said * * * * * *

"We do not say that a case may not arise in which it will be found that a State under the form of regulating its own affairs has encroached upon the exclusive domain of Congress in respect to inter-State commerce."

Such legislation, whatever its form, must be held to be invalid whenever, in the language of Sherlock *v.* Alling (93 U. S., 103), it is a burden on commerce, or interferes with its freedom; or when, in the language of Parham *v.* Woodruff (8 Wall., 138), it is in conflict with freedom of transit of persons or goods, (or transmission of intelligence).

The case of the Western Union Telegraph Company *v.* Atlantic and Pacific States Telegraph Company, (5 Nev., 102,) maintains the view taken by the Court below, and will repay perusal.

An Act to Expedite Telegraphic Communication for the Uses of the Government in its Foreign Intercourse. (11 Stats. at Large, p. 187.)

An Act to Encourage and Promote Telegraphic Communication between America and Asia. (19 Stats. at Large, p. 201.)

An Act to Encourage and Promote Telegraphic Communication between America and Europe. (14 Stats. at Large, p. 232.)

EXCLUSIVE PRIVILEGES BY STATES TO CONVEY TELEGRAPHIC COMMUNICATIONS WITHIN THEIR BORDERS ARE IN CONFLICT WITH THE GENERAL POWERS OF THE FEDERAL GOVERNMENT, AND MIGHT BE MADE SUBVERSIVE OF ALL FREEDOM OF COMMUNICATION WITH ITS OWN OFFICERS IN SUCH STATES.

But it is not alone the commerce clause of the Constitution which empowers Congress to pass the Act of July, 1866. The title of that Act, and its substance, clearly shows that Congress sought to acquire relations of control (by their consent), over telegraph companies, which should secure to the Government at all times, the use of the indispensable facilities belonging to them. As necessary means of communication with its various postal, military and naval establishments, Congress had a clear right to build its own lines, as it might (so far as the constitution is concerned) run its own mail coaches. It might authorize others, for those purposes, to go everywhere within the States to establish similar agencies. Suppose a State should organize a company with the exclusive privilege to carry the United States mails within its boundaries, or excluding some persons from the right to own and use the only vehicles adapted for that purpose.

The general power of Congress to pass all laws necessary and proper to carry into effect its other express powers may safely be referred to as authority for the Act of July 24th, 1866. Having the power to pass it, it cannot be doubted that in this, as in the case of more explicit powers, its authority, when exercised, is paramount.

By Act of July 7, 1838, §2 (5 Stats. at Large, p. 283), all railroads are declared post-routes. Upon all

ese routes mails are carried. Can it be doubted that Congress, if required in its judgment so to do, might authorize police rules and regulations within the post-offices and on the post-routes in States? If a State should forbid the running of trains on Sunday, might not Congress protect the train servants from punishment for the infringement of such a law in carrying mails on Sunday? The telegraph is an indispensable agent in the running of trains, whether run for commercial, military, postal or other purposes. Can Congress, which authorizes the carriage of its mails or soldiers where it pleases, be prevented from operating or protecting the trains conveying them by the telegraph? Certainly the State cannot by a grant to, or engagement with, private persons, so bind itself that it must forbid to its railroad corporations, in their service to general commerce, the use of this most valuable means for operating their trains. The rights of the Pensacola and Louisville R. R. Co. have been transferred to the respondent (fols. 76, 77, 78, 79, 80), and in addition to the service which it must perform for the Government under the Act of 1866, it must also constantly transmit the intelligence due or desirable between railroad officials, by which the transit of goods and persons is governed, and aided. To forbid the railroad company or its assignee to own or use such lines, is to burthen that commerce which consists in transit of goods or persons, and to affect the freedom which the common carrier ought to enjoy in performing his duties.

*The general subject of the right of Legislatures to limit by grant to individuals their customary power over matters of public concern, offers a tempting subject for discussion in this case. The Legislature of Florida is seen creating a special and exclusive privilege to be exercised upon the affairs and interests of others, irrespective of their being citizens of Florida or of other States. It is then seen giving its consent that still other persons shall be free to carry on the same business in the same place. This

gives rise to questions affecting (1) the power of the Legislature (outside of objections under the Constitution of the United States) to create special privileges in such matters; and (2) the effect of the subsequent legislation upon the first grant, in view of the notice which the grantee is bound to take of the limitations of legislative power in matters which involve an abandonment by the representative body of its constitutional duties and functions. The appellant has the consent of the State and of the private owner in addition to the authority of Congress. Even if the jurisdiction of the State and the Federal Government are concurrent, treating the matter upon that idea, we find that the Legislature of Florida by the Act of December, 1866, limited its own powers over commerce by excluding itself from the benefits of lawfully competing agencies of intercourse, but in 1874, that Legislature exercising its judgment as to the general interests of the community, resumed its previously relinquished authority. This reversal of its former action was not a breach of obligation, since it rested on the stability of a general law, and was in accordance with the right of the Legislature to proceed without regard to its own unconstitutional act, and with the right of Florida as a State to exercise powers of regulation over commerce concurrent, and, at the same time, consistent with those of Congress. And in taking back to itself this concurrent jurisdiction, the State of Florida, by the act of its Legislature in 1874, moreover, consented that the powers and privileges conferred by Congress upon the Western Union Telegraph Company, by the Act of December, 1866, should be made to extend within its own borders. We leave these questions with the citation of the familiar language of Chief-Justice Taney, in the Charles River Bridge case (11 Pet., 547):

"The object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish

its power of accomplishing the end for which it was created. And in a country like ours, free, active, and enterprising, continually advancing in numbers and wealth, new channels of communication are daily found necessary, both for travel and trade, and are essential to the comfort, convenience and prosperity of the people. A State ought never to be presumed to surrender this power, because, like the taxing power, the whole community have an interest in preserving it undiminished."

See also, upon this general subject, the case of People *v.* Roper, 35 N. Y., p. 629.

The general application of the numerous adjudications of this Court on the commerce clause of the Constitution, to the facts of this case, is, in the opinion of counsel, too clear to justify any extended reference to those cases. We respectfully submit that every vice which existed in the law which was declared unconstitutional in the great case of Gibbons *v.* Ogden, inheres in complainant's charter; and we believe the mere citation of that case renders all further reference to authority superfluous.

The judgment should be affirmed.

PERRY BELMONT,
GROSVENOR P. LOWREY,
Of Counsel for Respondent.

Appendix A.

(*Vol.* 14, *Statutes at Large*, 221.)

AN ACT to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that any telegraph company now organized, or which may hereafter be organized, under the laws of any State in this Union, shall have the right to construct, maintain and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been, or may hereafter be, declared such by Act of Congress, and over, under, or across the navigable streams or waters of the United States: *Provided*, That such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads. And any of said companies shall have the right to take and use from such public lands the necessary stone, timber and other materials for its posts, piers, stations, and other needful uses in the construction, maintenance and operation of said lines of telegraph, and may preempt and use such portion of the unoccupied public lands subject to preëmption through which its said lines of telegraph may be located as may be necessary for its stations, not exceeding forty acres for each station, but such stations shall not be within fifteen miles of each other.

SEC. 2. *And be it further enacted*, That telegraphic communications between the several departments of the Government of the United States and their officers and agents shall, in their transmission

over the lines of any of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General.

SEC. 3. *And be it further enacted*, That the rights and privileges hereby granted shall not be transferred by any company acting under this Act to any other corporation, association or person ; *Provided*, however, That the United States may, at any time after the expiration of five years from the date of the passage of this Act, for postal, military or other purposes, purchase all the telegraph lines, property, and effects of any or all of said companies at an appraised value, to be ascertained by five competent disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

SEC. 4. *And be it furiher enacted*, That before any telegraph company shall exercise any of the powers or privileges conferred by this Act, such company shall file their written acceptance with the Postmaster-General, of the restrictions and obligations required by this Act.

Approved, July 24, 1866.

Appendix B.

(*Laws of Florida*, 1873, *Ch.* 1942.)

AN ACT to Authorize the Pensacola and Louisville Railroad Company to construct, own and operate a Telegraph Line upon their Right of Way.

SECTION 1. *The people of the State of Florida, represented in Senate and Assembly, do enact as follows:* That said Pensacola and Louisville Railroad Company is granted the right and privilege of constructing, establishing, operating and maintaining a line or lines of electric telegraph upon the right of way of the said Pensacola and Louisville Railroad Company, from the Bay of Pensacola along the line of said Railroad Company to the junction of said railroad with the Mobile and Montgomery Railroad.

SEC. 2. *Be it further enacted*, That said Pensacola and Louisville Railroad Company, upon the erection of said line or lines of electric telegraph, be, and they are hereby empowered to contract and agree with other persons or bodies corporate, operating telegraph lines, to connect with the same upon such terms as may be agreed upon by and between said parties.

SEC. 3. *Be it further enacted*, That it shall be the duty of the said Pensacola and Louisville Railroad Company, whenever any line constructed by them shall be in readiness for operation, to receive messages from all persons or corporations upon payment of the tariff of fees fixed by them, and to transmit the same in good faith and without partiality.

SEC. 4. *Be it further enacted*, That all laws conflicting with this act are hereby repealed. Approved February 14, 1873.

(Laws of Florida, 1873, Ch. 1942, p. 20, 21.)

(*Laws of Florida*, 1874, *Ch.* 1997.)

AN ACT to amend an Act entitled an Act to authorize the Pensacola and Louisvi le Railroad Company to construct, own and operate a Telegraph Line upon their Right of Way, approved February 14, 1873.

The people of the State of Florida, represented in Senate and Assembly, do enact as follows:

SECTION 1. That the first and second sections of said Act, entitled "An Act to Authorize the Pensacola and Louisville Railroad Company to Construct, Own and Operate a Telegraph Line upon their Right of Way," approved 14th February, 1873, be and the same are hereby amended so as to read as follows: That the Pensacola and Louisville Railroad Company be and it is hereby authorized to construct, maintain and operate a telegraph line from the Bay of Pensacola along the line of the said road as now located, or as it may hereafter be located, and along connecting roads in said county to the boundary lines of the State of Alabama, and the said lines may connect and be consolidated with other telegraph companies within or without the State, and said company may pledge, mortgage, lease, sell, assign, and convey the property appertaining to the said telegraph lines, and the rights, privileges, and franchises conferred by this act, with full power in such assignees to construct, own, and operate such telegraph lines and enjoy all the privileges, rights, and franchises conferred by this act, but in such case the said railroad company shall be responsible for the proper performance of the duties and obligations imposed by this Act.

Approved February 18, 1874.

(Laws of Florida, 1874, ch. 1997 p. 63.)